No. 17325

United States
Court of Appeals
for the Ninth Circuit

GEORGE FLEUTI,

Appellant,

vs.

GEORGE K. ROSENBERG, DISTRICT DIRECTOR OF IMMIGRATION & NATURALIZATION SERVICE, LOS ANGELES, CALIFORNIA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

HIRAM W. KWAN,
425 Bernard Street,
Los Angeles 12, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney,

DONALD A. FAREED,
Assistant U. S. Attorney,
Chief of Civil Division,

JAMES R. DOOLEY,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

United States District Court
Southern District of California
Central Division
No. 1275-59K

GEORGE E. M. FLEUTI,

Plaintiff,

vs.

RICHARD C. HOY, DISTRICT DIRECTOR UNITED STATES DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND REVIEW OF ADMINISTRATIVE ACTION.

Comes now George E. M. Fleuti, plaintiff above named and for cause of action alleges:

I

That this United States District Court has jurisdiction over the subject matter of this action by virtue of the provisions of Title 8, United States Code Annotated, Sec. 1329 and Title 28, United States Code Annotated Sect. 2201 through 2202, and Title 5, United States Code Annotated Sect. 1009.

II

That the plaintiff, George E. M. Fleuti resides within the territorial jurisdiction of the Central Division of the United States District Court for the Southern District of California.

III

That the defendant, Richard C. Hoy is the District Director of the Immigration and Naturalization Service, 16th District within the southwest region at Los Angeles, California and as such is the official vested with authority to execute orders and warrants of deportation and to stay and execute.

IV

Defendant has issued or will cause to be issued a final order of deportation ordering plaintiff to be deported from the United States. That the defendant is vested with authority to stay the execution of said order and warrant of deportation.

V

Plaintiff, George E. M. Fleuti is a 47-year old native and citizen of Switzerland and has resided continuously within the United States of America as a permanent resident since his admission on October 9, 1952.

VI

That on or about September 22, 1959 an order of deportation was issued after a hearing before the United States Department of Justice Special Inquiry Officer in Los Angeles, California ordering plaintiff to be deported from the United States pursuant to the provisions of Section 241 (a)(1) of the Immigration & Nationality Act on the ground that plaintiff was subject to deportation at the time of his entry for the alleged reason that he was within one or more of the classes of aliens excludable by law existing at the time of such entry, to wit, aliens afflicted with Psychopathic personality under Sect. 212 (a) (4) of the Immigration

& Nationality Act, Title 8, United States Code, Annotated Sect. 1101 et seq.

VII

That plaintiff prior to said order of deportation was accorded a hearing on the above mentioned charge and in the course of the said hearing plaintiff denied and has at all times denied that he is a person afflicted with Psychopathic personality. In the course of the aforesaid hearing, plaintiff caused to be offered a medical report of David R. M. Harvey, M.D., which said report negatives the findings of Psychopathic personality and a copy of the final report is attached hereto and marked Exhibit "A" and made a part hereof by reference.

VIII

That as a result of said hearing plaintiff was determined to be deportable and or order of deportation was issued thereto. That the said order of deportation is invalid by virtue of the fact that it is not based upon reasonable, substantial and probative evidence.

IX

Plaintiff appealed the finding and order of deportation to the Board of Immigration Appeals and the Board of Immigration Appeals dismissed plaintiff's appeal on November 20, 1959.

X

Plaintiff has exhausted his administrative remedies and this complaint is filed upon a final order of deportation and defendant is proceeding to execute said order and warrant of deportation deporting plaintiff from the United States.

Wherefore, plaintiff prays that a temporary restraining order be issued enjoining defendant and his agents from executing the order of deporatation and warrant of deportation pending the determination of this proceeding, that a permanent injunction be granted restraining and enjoining the defendant from executing the said order and warrant of deportation and that a declaratory judgment be issued declaring the said order and warrant of deportation of plaintiff, null, void and unenforceable and for such other relief as may be proper in the premises.

/s/ HIRAM W. KWAN,
Attorney for Plaintiff.

EXHIBIT "A"

Aug. 10, 1959

Richard F. Porter, Esq.
Attorney at Law,
202 North Hawthorne,
Hawthorne,
California.

Re: Mr. George Fleuti,
305 North Montgomery,
Ojai.

Dear Mr. Porter:

Your client, Mr. Fleuti, was first examined by me on May 20, 1959, and he has since been re-examined on June 22, July 8, and Aug. 7, 1959, in order to determine the extent of his psychiatric problem and to evaluate his real motivation for treatment and control of his

interest in homosexuality as an outlet for his sexual and social needs.

This patient has been twice convicted of seeking homosexual contact. The circumstances in each case have indicated an interest in adult males who have similar interest. The circumstances of his arrests suggest entrapment, but I do not consider this an important item since Mr. Fleuti tells me that he has recognized homosexual interests for many years, since his youth. His first homosexual experience was at 26. However his socio-economic relationships have been consistently good according to my history. He was never arrested in his country of origin nor has there been any other difficulty in the U.S.A. He does not frequent homosexual hang-outs, has no evident interest in youths, manifests no irresponsible trends, and has his main social contacts with respected members of the community. It is my understanding that his work history—particularly in this country—is quite satisfactory.

The mental status examination of this patient is as follows: the patient is cooperative, freely relates his history, and makes no effort to minimize the problem. He is a lonely man and the main focus of his life is his work. There is a moderate elevation of anxiety, but no other psychiatric findings are present other than the trend toward homosexual outlet. Reality contact and the sense of social responsibil are intact.

His sexual drive—particularly at his age—is thought to be within his range of control, especially if he is under the supervision of continuing contact with a psychiatrist.

The diagnosis in this case is that of a mild mannered man with a good socio-economic adjustment who has from time to time sought sexual outlets with others who indicated a like interest. His deviation is not sufficient to justify the diagnosis of psychopathic personality. However, the formal label would be that of: Sexual deviation, homosexuality, now under control. During my several examinations of this patient I have concluded that his arrests have had a good effect on his homosexual trend control and that my repeated examinations have also heightened his sense of sexual control/and lessened his interest.

The California Code regarding Sexual Psychopaths requires that the person ". . . predisposed to the commission of sexual offenses . . . be so . . ." ". . . in a degree constituting him a menace to the health or safety of others. . . ." I do no find that Mr. Fleuti is a danger to any other person. In many ways he seems to have traits of a better than average citizen, in the sense of hard work, general morality, and honesty. I found no effort on his part to misrepresent the circumstances of his difficulty.

I do not think that another psychiatrist with adequate training and experience will be likely to disagree with my findings.

Very truly yours,

/s/ DAVID R. M. HARVEY, M.D.
Diplomate, American Board of
Psychiatry & Neurology.

DH jg

Vita

Yale University, B.S., Class of 1943

Tulane University School of Medicine, M.D., Class of 1947

Rotating Internship, Cottage Hospital, Santa Barbara, '47-'48

Resident Psychiatrist, Pilgrim State Hospital, West Brentwood, Long Island, N.Y., '48-'49

Resident Psychiatrist, University of Iowa Psychopathic Hospital and Clinic, '49-'51

Post Graduate Course in Psychiatry, New York Psychiatric Institute, Columbia University Medical School, '48-'49

University of Iowa Graduate School (Psychiatry), '49-'51

Staff Psychiatrist, Seattle V. A. Hospital, '51

Instructor in Psychiatry, University of Washington, School of Medicine, '51

Psychiatrist, Riverside California State Mental Hygiene Clinic, '51-'52 Director, '52-'53

Private psychiatric practice, '53 to date

Consulting Staff, St. John's Hospital, Oxnard

Consulting Staff, Foster Hospital, Ventura

Chief, Psychiatric Division, Ventura County General Hospital

Chairman, Ventura County Advisory Committee on Mental Health

Member: American Medical Assn., California State Medical Assn., Ventura County Medical Assn., American Association for the Advancement of Science, Western Electroencephalographic Assn., American Psychiatric Assn.

Diplomate Certified in Psychiatry by the American Board of Psychiatry & Neurology

[Endorsed]: Filed Dec. 9, 1959.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

George K. Rosenberg, successor to the defendant above named, by and through the undersigned, in answer to the Complaint on file herein admits, denies, and alleges as follows:

I

Neither admits nor denies the allegations contained in paragraph I on the ground that said allegations are conclusions of law.

II

Admits the allegations contained in paragraph II.

III

Admits the allegations contained in paragraph III, except that George K. Rosenberg is now the Acting District Director, Immigration & Naturalization Service, Los Angeles, California, having succeeded Richard C. Hoy.

IV

Admits the allegations contained in paragraph IV.

V

Answering paragraph V, defendant admits that plaintiff, George E. M. Fleuti is a 47 year old native and citizen of Switzerland, but denies the remaining allegations of paragraph V. Defendant alleges instead that

plaintiff has resided continuously within the United States of America as a permanent resident since his admission on October 9, 1952 except for a one day visit to Ensenada, Mexico, in August of 1956.

VI

Answering paragraph VI, defendant admits that on or about September 22, 1959, an order of deportation was issued after a hearing before the United States Department of Justice Special Inquiry Officer in Los Angeles, California, ordering plaintiff to be deported from the United States pursuant to the provisions of Section 241(a)(1) of the Immigration and Nationality Act, but denies the remaining allegations contained in paragraph VI. Defendant alleges instead that the aforementioned Special Inquiry Officer concluded that plaintiff is subject to deportation on the ground that at the time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to-wit, aliens afflicted with Psycopathic Personality, under Section 212(a)(4) of the Act.

VII

Answering paragraph VII, defendant admits that plaintiff prior to said order of deportation was accorded a hearing on the above mentioned charge, that in the course of the aforesaid hearing plaintiff caused to be offered a medical report of David R. M. Harvey M.D., and that a copy of the final report is attached to the complaint herein and marked Exhibit "A" and made a part thereof by reference. Except as expressly admitted herein defendant denies the remaining allegations contained in paragraph VII on the ground that said allegations are conclusions of law.

VIII

Answering paragraph VIII, defendant admits that as a result of said hearing plaintiff was determined to be deportable and that an order of deportation was entered. Except as expressly admitted herein defendant denies the remaining allegations contained in paragraph VIII.

IX

Admits the allegations contained in paragraph IX.

X

Answering paragraph X defendant admits that at the time the complaint herein was filed the allegations of said paragraph were true; however, defendant alleges that no action will be taken to deport plaintiff from the United States until the present judicial proceedings are terminated.

For a Further, Separate, and First Affirmative Defense to Said Complaint, Defendant Alleges:

I

The plaintiff herein has been accorded a full and fair hearing in conformity with law to determine his right to be and remain in the United States. There will be offered in evidence when this matter comes on for hearing a certified record of the Immigration and Naturalization Service, Department of Justice, containing the complete record of the deportation proceedings relating to the plaintiff.

For a Further, Separate, and Second Affirmative Defense to Said Complaint, Defendant Alleges:

I

The complaint on file herein fails to state a claim upon which relief can be granted.

Wherefore, defendant prays for a judgment dismissing said complaint, denying the relief prayed for therein, and for such other relief as to the Court seems just and proper in the premises.

Dated: January 21, 1960.

LAUGHLIN E. WATERS,
United States Attorney.

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division.

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Jan. 21, 1960.

[Title of District Court and Cause.]

PRE-TRIAL CONFERENCE ORDER

Following pre-trial proceedings pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 9 of this Court, It is Ordered:

I.

This is an action for judicial review of an Order of Deportation outstanding against the plaintiff.

II.

Federal jurisdiction is invoked upon the ground that there is a final Order of Deportation outstanding against the plaintiff, issued by a Special Inquiry Officer of the Immigration and Naturalization Service on September 22, 1959, review of which is authorized by Section 10 of the Act of June 11, 1946 (Administrative Procedure Act), 60 Stat. 243, 5 U. S. C. A. §1009.

III.

The following facts are admitted and require no proof:

A. Plaintiff, George E. M. Fleuti, is an alien, a native and citizen of Switzerland. He was admitted to the United States for permanent residence at Rouses Point, New York, on October 9, 1952. He last entered the United States at San Ysidro, California, during August, 1956 as a returning resident alien after a visit of a few hours to Ensenada, Mexico.

B. The plaintiff resides within the territorial jurisdiction of the Central Division of the United States District Court for the Southern District of California.

C. George K. Rosenberg is the District Director, Immigration and Naturalization Service, Los Angeles, California, and as such is an official vested with authority to execute orders and warrants of deportation. It is stipulated and agreed that George K. Rosenberg may be substituted as a party defendant in this action in the place and stead of Richard C. Hoy.

D. On September 22, 1959 an Order of Deportation was issued, after a hearing, by a Special Inquiry Officer

of the Immigration and Naturalization Service, ordering that plaintiff be deported from the United States pursuant to the provisions of Section 241 (a) (1) of the Immigration and Nationality Act on the ground that at the time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens afflicted with Psychopathic Personality, under Section 212 (a) (4) of the Act.

E. Plaintiff appealed the order of the Special Inquiry Officer to the Board of Immigration Appeals, United States Department of Justice, and on November 20, 1959 said Board dismissed plaintiff's appeal.

IV.

The reservations as to the facts recited in paragraph III above are as follows: None.

V.

The following facts, though not admitted, are not to be contested at the trial by evidence to the contrary: None.

VI.

The following issues of fact, and no others, remain to be litigated upon the trial:

1. Is the Order of Deportation outstanding against the plaintiff based upon reasonable, substantial and probative evidence (the defendant contends that this is an issue of law, at least to the extent that no evidence not received during deportation proceedings is admissible before this Court)?

VII.

The exhibits to be offered at the trial, together with a statement of all admissions by and all issues between the parties with respect thereto, are as follows:

A. Plaintiff's exhibits:

1. Up-to-date report of medical examination of plaintiff to be made prior to trial by David R. M. Harvey, M.D.

B. Admissions and Issues Relating to plaintiff's exhibits:

1. Defendant contends that plaintiff's Exhibit 1 listed above is not admissible in evidence in these proceedings.

C. Defendant's exhibits:

1. Authenticated record of the Immigration and Naturalization Service relating to plaintiff, File No. A 8 382 428.

D. Admissions Concerning Defendant's Exhibit:

1. It is stipulated and agreed that the exhibit of the defendant listed above may be received in evidence without objection.

VIII.

The following issues of law, and no others, remain to be litigated upon the trial:

1. Is the Order of Deportation outstanding against the plaintiff based upon reasonable, substantial, and probative evidence?

2. Were the deportation proceedings relating to plaintiff fair and in accordance with law?

3. May this Court receive evidence which was not a part of the deportation proceedings?

4. Is plaintiff's Exhibit 1 listed in Part VII A above, admissible in evidence in these proceedings?

5. Is Section 212(a)(4) of the Immigration and Nationality Act unconstitutional as being vague and ambiguous?

IX.

The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this Order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

Dated: This 7th day of Nov., 1960.

/s/ JAMES M. CARTER
United States District Judge

Approved as to Form and Content

/s/ HIRAM W. KWAN
Attorney for Plaintiff

/s/ JAMES R. DOOLEY
Assistant U. S. Attorney
Attorney for Defendant.

[Endorsed]: Filed Nov. 7, 1960.

[Title of District Court and Cause.]

STIPULATION FOR ADMISSION OF IMMIGRATION RECORD IN EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND FOR RE-SUBMISSION OF MOTION FOR DECISION AND ORDER THEREON.

Whereas, on December 8, 1960 the Court denied defendant's Motion for Summary Judgment "without prejudice, subject to being renewed by attaching thereto the authenticated record of the Immigration and Naturalization Service relating to the plaintiff"; and

Whereas, the aforementioned authenticated record of the Immigration and Naturalization Service relating to the plaintiff has heretofore been lodged with the Court pursuant to Rule 9 (f) Local Rules, Southern District of California;

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel, that the said authenticated record of the Immigration and Naturalization Service relating to the plaintiff, heretofore lodged with the Court, may be deemed admitted in evidence in support of defendant's Motion for Summary Judgment filed herein on September 16, 1960, and that said motion may be deemed re-submitted to the Court for decision.

Dated: This 13th day of December, 1960.

/s/ HIRAM W. KWAN,
Attorney for Plaintiff.
LAUGHLIN E. WATERS,
United States Attorney.
DONALD A. FAREED,
Assistant U. S. Attorney,
Chief of Civil Division.
/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Defendant.

It Is So Ordered:

This 20th day of December, 1960.

/s/ FRED KUNZEL,
United States District Judge.

12-21-60—

Record of Immigration & Natlzn Service marked as Defts. Exhibit A to the motion, & in evidence.

L B Figg
Deputy Clerk.

[Endorsed]: Filed Dec. 21, 1960.

[Title of District Court and Cause.]

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In ruling upon defendant's Motion for Summary Judgment, in addition to considering all of the documents in the Court file, including a report of plaintiff's doctor which the Court considers to be merely cumulative, the Court had submitted to it by stipulation the

authenticated copy of the file of the Immigration and Naturalization Service relating to the plaintiff.

The plaintiff first entered the United States as an alien in October of 1952, and in August of 1956 re-entered the United States at San Ysidro, California, after a day's trip to Ensenada, Mexico. In April of 1959, the Immigration and Naturalization Service served upon the plaintiff an Order to Show Cause why he should not be deported by reason of having been convicted of a crime involving moral turpitude. Subsequently there was lodged in the proceeding a charge that the plaintiff was excludable at the time of entry (1956) under Sec. 212(a)(4) of the Immigration and Nationality Act, 8 U. S. C. A., Sec. 1182(a)(4), as a person afflicted with psychopathic personality. There appears in the file, as Exhibit 2, a certified copy of the Minutes of the Superior Court of the State of California showing that defendant pleaded guilty to violation of Sec. 288a of the Penal Code of California, the date of the offense being February 16, 1956; also a sworn statement of the plaintiff (Exhibit 6) wherein he admitted having been a sexual deviate for some time prior to his original entry into the United States; also (Exhibit 5) a report by a doctor of the United States Public Health Service who classified the plaintiff as a psychopathic personality. This certainly constitutes ample evidence to support a finding by the Service that plaintiff at the time of his entry was a sexual deviate, classifiable as a person afflicted with a psychopathic personality.

The plaintiff's principal contention is that the term "psychopathic personality" is so vague and indefinite

as to render the statute invalid and unconstitutional. While it may be true that if the term be so used in a criminal statute that such statute would be held to be unconstitutional, however, here the statute is not a criminal statute but defines aliens who are to be excluded from the United States. There is no question but that Congress can determine what persons should be excluded and for whatever causes. Here, from the legislative history, it is clear that Congress intended that sexual deviates would be classified by the enforcing agencies as psychopathic personalities. See footnotes in the case of United States v. Flores-Rodriguez, 237 F. 2d 405, at pp. 412-413.

Inasmuch as there does not appear to be any genuine issue as to any material fact, defendant's Motion for Summary Judgment is hereby granted. Findings of fact and conclusions of law are to be submitted in accordance with the above.

Dated: This 4th day of January, 1961.

/s/ JAMES M. CARTER,
United States District Judge.

Copies to:
Hiram W. Kwan, Esq.
425 Bernard Street,
Los Angeles 12, California.

Laughlin E. Waters,
United States Attorney,
James R. Dooley, Esq.
Asst. U. S. Attorney,
Federal Building,
Los Angeles 12, California.

[Endorsed]: Filed Jan. 9, 1961.

United States District Court
Southern District of California
Central Division

No. 1275-59 K Civil

GEORGE E. M. FLEUTI,

Plaintiff,

vs.

GEORGE K. ROSENBERG, District Director, Immigration and Naturalization Service, Los Angeles, California,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The defendant's motion for summary judgment having been submitted to the Court for decision, the parties hereto having stipulated that an authenticated record of the Immigration and Naturalization Service relating to the plaintiff might be deemed admitted in evidence in support of said motion; and the Court having reviewed and considered said record of the Immigration and Naturalization Service relating to the plaintiff; and the Court having reviewed and considered all of the documents in the Court file, and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

Plaintiff, George E. M. Fleuti, is an alien, a native and citizen of Switzerland. He was admitted to the United States for permanent residence at Rouses Point,

New York, on October 9, 1952. He last entered the United States at San Ysidro, California, during August, 1956 as a returning resident alien after a temporary visit to Mexico.

II.

On September 22, 1959, an order of Deportation was issued, after a hearing, by a Special Inquiry Officer of the Immigration and Naturalization Service, ordering that plaintiff be deported from the United States pursuant to the provisions of Section 241(a) (1) of the Immigration and Nationality Act on the ground that at the time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to-wit, aliens afflicted with Psychopathic Personality, under Section 212 (a) (4) of the Act.

III.

Plaintiff appealed the aforementioned order of the Special Inquiry Officer to the Board of Immigration Appeals, United States Department of Justice; and on November 20, 1959 said Board dismissed plaintiff's appeal.

IV.

The record of the deportation proceedings relating to the plaintiff contains reasonable, substantial and probative evidence that plaintiff, at the time of his last entry during August, 1956, was within one or more of the classes of aliens excludable by the law existing at the time of such entry to wit: aliens afflicted with psychopathic personality under Section 212 (a) (4) of the Immigration and Nationality Act.

V.

The order of deportation outstanding against the plaintiff is based upon reasonable, substantial, and probative evidence.

VI.

The deportation proceeding relating to the plaintiff were fair and were in accordance with law.

Conclusions of Law

I.

This Court has jurisdiction of the within action under the provisions of Section 10 of the Act of June 11, 1946 (Administrative Procedure Act), 60 Stat. 243, 5 U. S. C. A. §1009.

II.

The record of the deportation proceedings relating to the plaintiff contains reasonable, substantial and probative evidence that plaintiff, at the time of his last entry during August, 1950, was within one or more of the classes of aliens excludable by the law existing at the time of such entry; to wit: aliens afflicted with psychopathic personality under Section 212 (a) (4) of the Immigration and Nationality Act.

III.

The order of deportation outstanding against the plaintiff is based upon reasonable, substantial, and probative evidence.

IV.

The deportation proceedings relating to the plaintiff were fair and were in accordance with law.

V.

Section 212 (a) (4) of the Immigration and Nationality Act, 66 Stat. 182, 8 USCA §1182 (a) (4) is

not unconstitutional as being vague or ambiguous, either on its face or as applied to the plaintiff herein.

VI.

The order of deportation outstanding against the plaintiff is valid, and plaintiff is deportable pursuant to said order.

VII.

There is no genuine issue as to any material fact in the instant case, and the defendant is entitled to summary judgment as a matter of law.

VIII.

Judgment should be entered in favor of the defendant and against the plaintiff, denying the relief prayed for in plaintiff's Complaint and awarding to the defendant his costs and disbursements incurred herein.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed:

1. That judgment be, and the same is hereby entered in favor of the defendant and against the plaintiff, denying the relief prayed for in plaintiff's Complaint.

2. That the defendant have his costs and disbursements incurred herein.

Dated: This 20 day of January, 1961.

Costs taxed $20.00.

/s/ JAMES M. CARTER,
United States District Judge.

Affidavit of Service by Mail Attached.

[Endorsed]: Lodged Jan. 13, 1961. Filed and Entered Jan. 30, 1961.

[Title of District Court and Cause.]

NOTICE OF APPEAL.

Notice is Hereby Given that plaintiff George E. M. Fleuti hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in the above-entitled action on January 30, 1961.

/s/ HIRAM W. KWAN
Attorney for Plaintiff

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Feb. 27, 1961.

[Title of District Court and Cause.]

Civil No. 1275-59 K

EX PARTE MOTION AND ORDER TO EXTEND TIME FOR FILING RECORD AND DOCKETING APPEAL

Plaintiff George E. M. Fleuti, hereby moves the Court for an extension of time to file the record and to docket the appeal of the above entitled case to May 29, 1961. That this additional period of time is necessary to complete the records and files in this matter on appeal to the United States Court of Appeals for the Ninth Circuit.

/s/ HIRAM W. KWAN
Attorney for Plaintiff

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 29, 1961.

[Title of District Court and Cause.]

Civil No. 1275-59 K

ORDER EXTENDING TIME FOR DOCKETING APPEAL

On application of plaintiff George E. M. Fleuti ex parte, the Court being fully advised, it is ordered that the time for filing the record on appeal with the United States Court of Appeals for the Ninth Circuit and for docketing therein the appeal taken by notice of appeal filed February 27, 1961, is extended to May 28, 1961, pursuant to Rule 73(g) of the Federal Rules of Procedure.

Dated: March 29, 1961.

/s/ FRED KUNZEL,
United States District Court Judge

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 29, 1961.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which are listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

Page:

1 Names and Addresses of Attorneys

2 Complaint, filed 12/9/59

8 Answer to Complaint, filed 1/21/60
13 Pre-Trial Conference Order, filed 11/7/60
17 Stipulation for admission of Immigration Record in evidence in support of Motion for Summary Judgment and for re-submission of motion for decision and Order thereon, filed 12/21/60
19 Order granting Defendant's Motion for Summary Judgment, filed 1/9/61
22 Findings of Fact, Conclusions of Law and Judgment, filed and entered 1/30/61
27 Notice of Appeal, filed 2/27/61
29 Designation of record on appeal, filed 3/29/61
31 Statement of Points on appeal, filed 3/29/61
33 Ex Parte Motion and Order to extend time for filing record and docketing appeal, filed 3/29/61
35 Order extending time for docketing appeal, filed 3/29/61
37 Counter-Designation of record on appeal, filed 3/29/61
Defendant's Exhibit "A"

Dated: April 4, 1961.

[Seal]

JOHN A. CHILDRESS,
Clerk.

/s/ By WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 17325. United States Court of Appeals for the Ninth Circuit. George Fleuti, appellant, vs. George K. Rosenberg, District Director of Immigration & Naturalization Service, Los Angeles, California, Appellee. Transcript of Record. Appeal from

the United States District Court for the Southern District of California, Central Division.

Filed: April 5, 1961.

Docketed: April 14, 1961.

/s/ FRANK H. SCHMID,
Clerk of the United States District Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

Case No. 17325 Undocketed

GEORGE E. M. FLEUTI,

Appellant,

vs.

GEORGE K. ROSENBERG, District Director, Immigration and Naturalization Service, Los Angeles, California,

Appellee.

STATEMENT OF POINTS ON APPEAL

Appellant hereby presents the points upon which he claims the District Court erred:

1. That the Order of Deportation is without substantial probative, or reasonable evidence;

2. That Section 212(a)(4) of the Immigration and Nationality Act was unconstitutional as being vague and ambiguous.

/s/ HIRAM W. KWAN,
Attorney for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed April 12, 1961. Frank H. Schmid, Clerk.

30

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

Los Angeles 13, California

File No. A-8 382 428

IN THE MATTER OF GEORGE ERNST MARCEL FLEUTI

HEARING IN DEPORTATION PROCEEDINGS

Place: Los Angeles, California.

Date: April 14, 1959.

Persons present: Special Inquiry Officer: Bert F. Kearney. Examining Officer: Richard L. Lay. Stenographer: Edythe D. Marusa. Respondent: George Ernst Marcel Fleuti.

Hearing conducted in the English language.

SPECIAL INQUIRY OFFICER (Hereinafter designated as INQUIRY OFFICER) TO RESPONDENT:

Q. Do you speak and understand the English language?

A. Yes, I do.

Q. I have here an Order to Show Cause in the matter of George Ernst Marcel Fleuti, which I will show to you and ask you to inspect it and ask you if you are the person named in this order, as the respondent, and if you have been furnished with a copy of it?

A. Yes, I have a copy here.

Q. It is alleged in this order, that you are in the United States in violation of law, in that:

(1) You are not a citizen or national of the United States;

(2) You are a native and national of Switzerland;

(3) You last entered the United States at San Ysidro, California, during August, 1956;

(4) You were then admitted as a returning resident alien;

(5) You were convicted in the Superior Court of the State of California, in and for the County of Los Angeles, for sex perversion, in violation of Section 288a, Penal Code of California, on March 9, 1956.

Do you understand these allegations?

A. Yes.

31 Q. It is also charged in the order, you are subject to deportation from the United States, pursuant to the provisions of Section 241(a) of the Immigration and Nationality Act, in that at the time of entry, you were within one or more of the classes of aliens excludable by law existing at the time of such entry, to wit, aliens having been convicted of a crime involving moral turpitude, under Section 212(a)(9) of the Act: Sex Perversion.

Any alien, who at the time of his entry into the United States, is an alien who has previously been convicted of any crime involving moral turpitude, is not admissible to the United States, and if such alien enters, being excludable at the time of entry, may become thereafter subject to deportation.

The conviction in your case in the charge is for sex perversion. Do you understand this charge?

A. Yes.

Q. This proceeding, today, is a hearing, the nature and purpose of which, is to determine your deportability from the United States on this charge set forth in the order. You have the right to be represented in this proceeding by an attorney or other counsel or representative, authorized to practice before the Immigration and Naturalization Service. If you wish to be represented, such representation must be of your own choice and without any expense to the Government. Have you retained or employed anyone to represent you in this proceeding, or do you intend to do so?

A. I intend to do so.

Q. Have you made arrangements for anyone to represent you?

A. Not yet, no.

Q. When you received your copy of this Order to Show Cause did you read it?

A. I read it all, yes.

Q. You were informed by a notice on the back of this Order to Show Cause, that you might be represented in this proceeding by counsel. Why didn't you make arrangements to be represented, if you wish to have someone represent you?

A. The main reason, I didn't want anybody to know about my case if possible.

Q. But, you do wish to be represented?

A. Well, second, I live in Ojai, and I had to contact someone here in Los Angeles.

32 Q. Do you wish to be represented by a local attorney?

A. Yes, I think it is much easier for me and for him.

Q. The hearing will be adjourned at this time until Thursday, April 16, 1959, at 9:00 A.M. in order to give you an opportunity to arrange for counsel to represent you in this proceeding. You are informed that this is the only continuance that will be granted to you for this purpose, and if you appear on that date without counsel, we will proceed with the hearing regardless, unless you have some good and sufficient reason for not having obtained counsel. Do you understand?

A. Yes, I understand.

SPECIAL INQUIRY OFFICER. Have the record show that respondent is furnished with Form I293.

HEARING CONTINUED

I certify: That to the best of my knowledge and belief, the foregoing transcript is a true and correct report of everything that was stated during the course of the hearing, excluding statements made off the record:

Edythe D. Marusa.
EDYTHE D. MARUSA,
Stenographer.

33 UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

File: A-8 382 428

MATTER OF GEORGE ERNST MARCEL FLEUTI, RESPONDENT
IN DEPORTATION PROCEEDINGS—TRANSCRIPT OF HEARING

Hearing held on April 20, 1959, at Los Angeles, California, before Special Inquiry Officer Bert F. Kearney. Recorded by Edythe D. Marusa, Stenographer. Language, English. Official Interpreter ..... Other Interpreter .....

APPEARANCES

On behalf of Service: ..... Examining Officer.
On behalf of Respondent: Richard F. Porter, Esquire, Attorney at Law, 202 N. Hawthorne Blvd., Hawthorne, California.

Form I-297.
(4-1-59.)

34 SPECIAL INQUIRY OFFICER TO RESPONDENT:

Q. Please stand and raise your right hand. Do you solemnly swear the testimony you give will be the truth, the whole truth and nothing but the truth; So Help You God?

A. Yes, I do.

Q. What is your name?

A. George Ernst Marcel Fleuti.

Q. The hearing in your case was adjourned on April 14, 1959 for the purpose of affording you an opportunity to arrange for a counsel to represent you in these proceedings. Have you retained Attorney Porter to represent you in this proceeding?

A. Yes.

SPECIAL INQUIRY OFFICER TO COUNSEL:

Are you ready to proceed, Mr. Porter?

COUNSEL:

Yes, sir, we are. This man, Mr. Fleuti is agreeable to admit the allegations contained in the Order to Show Cause.

SPECIAL INQUIRY OFFICER:

I will take them up one by one.

SPECIAL INQUIRY OFFICER TO RESPONDENT AND COUNSEL:

Q. During this proceeding, you will be given every reasonable opportunity to inspect and examine any and all of the evidence presented. Should any witnesses be presented, you have the right to question such witnesses regarding any of their testimony, to cross-examine them, to make objections to the introduction in this record of any evidence or testimony of any witnesses, and to present any evidence or any witnesses in your own behalf; is that understood?

COUNSEL:

Yes, sir; he does.

35 SPECIAL INQUIRY OFFICER TO COUNSEL:

Mr. Porter, have you familiarized yourself with the Order to Show Cause in this proceeding?

COUNSEL:

Yes, sir, I have.

SPECIAL INQUIRY OFFICER TO COUNSEL:

Does the respondent admit or deny the truth of allegation #1?

COUNSEL:

He admits that allegation, Sir.

SPECIAL INQUIRY OFFICER TO COUNSEL:

Does respondent admit or deny the truth of allegation #2?

COUNSEL:

He admits that allegation, also.

SPECIAL INQUIRY OFFICER TO COUNSEL:

Does respondent admit or deny the truth of allegation #3?

COUNSEL:

He also admits that, sir.

SPECIAL INQUIRY OFFICER TO COUNSEL:

Does respondent admit or deny the truth of allegation #4?

COUNSEL:

He also admits that.

SPECIAL INQUIRY OFFICER TO COUNSEL:

Does respondent admit or deny the truth of allegation #5?

COUNSEL:

And, admits that.

36 SPECIAL INQUIRY OFFICER TO COUNSEL:

Does the respondent admit or deny he is subject to deportation from the United States on the charge set forth in the Order?

COUNSEL:

Yes, he admits it.

SPECIAL INQUIRY OFFICER TO RESPONDENT:

Q. Mr. Fleuti, if you are ordered deported from the United States, what country do you designate as the country to which you shall be deported?

A. I want to go back to Switzerland.

Q. How old are you?

A. Forty-seven.

Q. Are your parents living?

A. No.

Q. In what country were your parents born?

A. In Switzerland.

Q. Was either of your parents ever in the United States?

A. No.

Q. Are you married?

A. No, sir.

Q. Have you ever been married?

A. No, sir.

Q. Do you have any close family relatives in the United States?

A. Yes, I do.

Q. What relatives do you have here?

A. An uncle and an aunt.

Q. Where are they?

A. In New Jersey.

Q. What is their status in this country; by that I mean, are they lawful permanent residents here or citizens of the United States?

A. They are citizens of the United States.

37 Q. Do you know how they acquired citizenship?

A. I don't know; the only thing I know, my uncle came about 55 years ago or something like that; I think 1903 or so, but I couldn't say for sure.

Q. And, your aunt?

A. Well, to tell the truth, I don't know exactly about my aunt. I know she was German.

Q. Do you have any other relatives here?

A. I have two cousins.

Q. Where are they?
A. They live near San Francisco, Contra Costa.
Q. Are you employed?
A. Yes.
Q. By whom?
A. In Ojai, by the Ojai Valley Inn.
Q. How long have you been employed there?
A. I have been employed there since January, 1954.
Q. What do you do?
A. I am desk clerk.
Q. What is your salary?
A. $400.
Q. Per month?
A. Per month.
Q. Do you have any other income from any source?
A. No, I don't.
Q. Do you own any property in the United States, real property, real estate?
A. No.
Q. Do you have any money saved?
A. Yes, sir.
Q. In the bank?
A. Yes.
Q. How much?
A. I think I have about $2,000.
Q. Do you have any other personal property?
A. No.
Q. Didn't you mention an automobile?
A. Oh, yes, a car—did you mention a radio or phonograph?
Q. I will ask you another question; do you have any other personal property, except personal possessions of clothing?
A. I have a radio; a gramophone.
Q. Have you ever previously been arrested, charged with any criminal offense, anywhere?
A. No, sir.
Q. Have you been fingerprinted?
A. Yes, sir.
Q. Where?
A. At the County jail here.

38

Q. Is that in connection with your arrest as admitted in allegation #5, in the Order to Show Cause?

A. Yes.

Q. In connection with that arrest, I show you and your counsel, certified copies of the court proceedings in that case, and ask you if you are the person named in this record, and if the facts as related therein are correct?

A. Yes, sir, it is correct.

SPECIAL INQUIRY OFFICER:

Certified copies of the information and judgment are received in evidence and marked Exhibit 2.

SPECIAL INQUIRY OFFICER TO RESPONDENT:

Q. You have never been arrested on any other occasion; is that correct?

A. One time before.

Q. When?

A. In 1953.

Q. Where?

A. Here in Los Angeles.

Q. On what charge?

A. I don't remember; misdemeanor. I think they called it.

39 Q. Well, what was the charge?

A. You mean the fine?

Q. What criminal violation, what offense were you charged with?

COUNSEL (interposing) TO RESPONDENT:

Q. What was the nature of the offense you were charged with?

A. I don't know how to explain; I don't know if it was a felony; I don't remember.

SPECIAL INQUIRY OFFICER TO RESPONDENT:

Q. You don't remember?

A. It was almost a similar case.

Q. What is your answer to that question; I have asked you a question for the record; with what offense were you charged?

A. (No answer.)

Q. Similar to this as reflected by Exhibit 2?

A. Yes.

Q. And, how did you plead at that time?

A. Guilty.

Q. Were you sentenced?

A. I don't remember whether it was $50 or $100 fine.

Q. How long were you in jail?

A. I was arrested; I wasn't in jail, but I was released on bail.

Q. And, you appeared in court and entered your plea; is that correct?

A. Yes.

Q. Have you been arrested on ar other occasion for any offense?

A. I was arrested, but I wasn't guilty.

Q. The question was, were you arrested?

A. Yes.

Q. When?

A. I don't remember the exact time.

Q. What year?

A. 1958.

40 Q. Last year?

A. Last year.

Q. Where?

A. Oxnard.

Q. And, were you charged formally with any offense at that time; were you taken into court?

A. No, the case was dismissed.

Q. Did you appear in court?

A. No, I didn't; I appeared for the hearing.

Q. Preliminary hearing?

A. Yes, that is what they called it.

Q. Were the charges dismissed?

A. No, I plead not guilty.

Q. Did you have a trial?

A. No, I didn't have a trial.

Q. What disposition was made of your case at that time, if you plead not guilty? Did you go before the judge?

A. On the preliminary hearing.

Q. And, you plead not guilty?

A. Yes.

Q. And, the judge found you not guilty, or did you have a trial?

A. I didn't have a trial.

Q. How were you informed that the charges had been dismissed?

A. By my attorney.

Q. You have admitted the allegation #3, that you last entered the United States at San Ysidro, California, during August, 1956; how long had you been in Mexico immediately preceding this entry?

A. About a couple hours.

Q. Why did you go to Mexico?

A. I went to Ensenada.

Q. For what purpose?

A. Just visiting; taking a trip.

Q. Did you go to Mexico from the United States?

A. Yes.

Q. When did you first enter the United States?

A. October the 9th, 1952.

41 Q. And, where did you enter at that time?

A. At Rouses Point, New York.

Q. Were you lawfully admitted to the United States?

A. Yes.

Q. For how long a period of time were you admitted?

A. Permanent.

Q. Do you have any evidence of your lawful admission for permanent residence at that place?

A. Yes, a card, an alien card.

Q. And, where is the alien card?

A. You have it; the Immigration and Naturalization Service has it.

Q. You mean it was picked up when these proceedings were instituted?

A. Yes, it was taken up by Mr. Perkins.

Q. Had you been in the United States at any time prior to that entry in 1952?

A. No, I didn't enter.

Q. How many times have you been absent from the United States since this entry in 1952?

A. The only time, when I went down to Ensenada.

Q. In August, 1956?

A. Well, I wasn't sure about the time; when he asked me, 1956 or 1957, well, I still don't recollect exactly, because it was such a short trip, couple hours and I have no proof.

SPECIAL INQUIRY OFFICER TO COUNSEL:

Mr. Porter, do you wish to ask the respondent any questions or submit any evidence in his behalf?

COUNSEL:

Yes, I have a letter from Mr. William G. Briggs, the Managing Director of the Ojai Valley Inn, where Mr. Fleuti is employed, and I should like to ask this be received for whatever purpose it might serve in these proceedings.

SPECIAL INQUIRY OFFICER:

Received in evidence and marked Exhibit 3.

42 SPECIAL INQUIRY OFFICER TO COUNSEL:

Anything further?

COUNSEL:

That is all, sir; I believe I have nothing further.

SPECIAL INQUIRY OFFICER TO RESPONDENT:

As you have admitted as being true, the factual allegations contained in the Order to Show Cause and have further admitted that you are deportable from the United States on the charge set forth therein, I have concluded that your deportability has been established and will enter the following order:

It is ordered that the respondent be deported from the United States in the manner provided by law on the charge contained in the Order to Show Cause.

SPECIAL INQUIRY OFFICER TO RESPONDENT:

Q. You have the right to appeal from this decision and order to the Board of Immigration Appeals at Washington, D.C. Do you wish to appeal?

COUNSEL:

For the record, the respondent does not wish to appeal.

SPECIAL INQUIRY OFFICER:

Then, the order is final.

Have the record show the respondent is served with a written copy of the decision and order in this case.

Hearing closed.

HEARING CLOSED

I certify: That to the best of my knowledge and belief, the foregoing transcript is a true and correct report of everything that was stated during the course of the hearing, excluding statements made off the record: (Trans. 5–18–59.)

Edythe D. Marusa.
EDYTHE D. MARUSA,
Reporter-Stenographer.

42 *George Fleuti vs.*

43 *Exhibit 1*

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
UNITED STATES OF AMERICA

File No. A-8 382 426

In the Matter of)
) In Deportation Proceedings under Section 242
) of the Immigration and Nationality Act
George Ernst Marcel FLEUTI)
) ORDER TO SHOW CAUSE
) and
) NOTICE OF HEARING
Respondent.)

To: George Ernst Marcel Fleuti
305 W. Montgomery
Ojai, California

IT APPEARING, That you are in the United States in violation of law in that

1. You are not a citizen or national of the United States.
2. You are a native of Switzerland and a national of Switzerland
3. You last entered the United States at San Ysidro, California during August, 1956.
4. You were then admitted as a returning resident alien.
5. You were convicted in the Superior Court of the State of California, in and for the County of Los Angeles, for sex perversion in violation of Section 288a, Penal Code of California, on March 9, 1956.

Admits
Admits
Admits
Admits
Admits

and that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Admits

Section 241(a) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have been convicted of a crime involving moral turpitude, under Section 212(a)(9) of the Act; SEX PERVERSION.

Exhibit #1
APR 20 1959

IT IS ORDERED, That you appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at Room 244, 458 So. Spring Street, Los Angeles, Calif. on Tuesday April 14, 1959 at 10 a.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: April 7, 1959

IMMIGRATION AND NATURALIZATION SERVICE
Alfred K. Nielsen
ALFRED K. NIELSEN, District Director
for Investigations, Los Angeles, California

Form I-221 (Rev. 9-15-57) Fingerprinted: 3-25-59 (over)

44 *Exhibit 2*

In the Superior Court of the State of California in and for the County of Los Angeles

S.C. No. 178942

D.A. No. 218229

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

v.

GEORGE MARCEL FLEUTI AND JOHN FREDRICK BEMENT, DEFENDANTS

INFORMATION—VIO. SECTION 288a, PENAL CODE

The said George Marcel Fleuti and John Fredrick Bement accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Violation of Section 288a, Penal Code of California, a felony, committed as follows: That the said George Marcel Fleuti and John Fredrick Bement, on or about the 16th day of February 1956 at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously participate in the act of copulating the sexual organ, to wit, the penis, of him, the said George Marcel Fleuti, with the mouth of John Fredrick Bement.

Filed in open Superior Court of the State of California, on motion of the District Attorney of said county.

Dated: Mar. 5, 1956.

HAROLD J. OSTLY,
Clerk.

By (S) H. H. Baruch,
H. H. BARUCH,
Deputy.

bam.

45 *Exhibit 2*

In the Superior Court of the State of California in and for the County of Los Angeles

MINUTES

March 9, 1956

Present: Hon. HERBERT V. WALKER, Judge

Department No. 41

178942

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

v.

GEORGE MACEL FLEUTI, DEFENDANT

Deputy District Attorney Malcom Harris and the Defendant with his counsel, J. Armstrong for G. T. Root, present. Defendant enters his plea of "Guilty as charged in the information". Defendant waives time for sentence. Sentence as indicated. Bail exonerated. Released.

Whereas the said defendant having duly pleaded guilty in this court of the crime of Violation of Section 288a, Penal Code of California, a felony, as charged in the information.

It is therefore ordered, adjudged and decreed that the said defendant must pay a fine in the sum of $200 within one week or serve one day in the County Jail for each $5 of said fine not paid.

Stay of execution of payment of fine is granted to March 16, 1956, at 2:00 p.m.

This Minute Order has been entered on .....

HAROLD J. OSTLY,

County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By ——— ———, *Deputy.*

Minutes—Fine.

Not remanded.

APRIL 20, 1959.

46 *Exhibit 3*

OJAI VALLEY INN
AND COUNTRY CLUB,
Ojai, California, April 17, 1959.

IMMIGRATION AND NATURALIZATION SERVICE,
458 South Spring Street, Los Angeles, California.

DEAR SIR: Mr. George Fleuti has worked directly under me for three years and eight months. Before that, Mr. Fleuti was employed here for one year and nine months. In other words, he has worked here at the Ojai Valley Inn and Country Club for a total of five years, three and one-half months.

I have thought enough of Mr. Fleuti and his ability to keep him in continuous employment and approximately one year ago made him Front Office Manager, directly responsible to me and in charge of approximately eight employees. His salary has been increased steadily as a result of his conscientious and efficient efforts toward making our operation the success that it is.

I personally, as Managing Director of this organization feel it would be a very serious matter should we have to lose the background and experience that Mr. Fleuti contributes to this organization.

From my observation, Mr. Fleuti's honesty is above reproach, as over a half million dollars pass through his hands each twelve months. We have never had any reason to doubt his honesty. Regarding character and normal attitude as regards the Ojai Valley Inn and Country Club and the employees that we have here steadily employed, there has never been any question, nor have I ever had to reprimand him in any way.

47 Other than one incident approximately three years ago, I have never known Mr. Fleuti to be in any way involved with the law in any respect.

Mr. Fleuti's position here at the Ojai Valley Inn and Country

Club will most certainly be secure and we would certainly find it very difficult to replace him.

Sincerely,

OJAI VALLEY INN AND COUNTRY CLUB,
William G. Briggs,
WILLIAM G. BRIGGS,
Managing Director.

WGB:rl.
APR. 20, 1959.

48 File No. A-8 382 428

UNITED STATES OF AMERICA
UNITED STATES DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE

In Deportation Proceedings Under Section 242 of the Immigration and Nationality Act

IN THE MATTER OF GEORGE ERNST MARCEL FLEUTI, RESPONDENT

DECISION OF THE SPECIAL INQUIRY OFFICER

The above-named respondent having appeared before me for hearing on this date, pursuant to the annexed Order To Show Cause, and having admitted that the factual allegations contained therein are true, and having further admitted that (s)he is deportable from the United States on the charges set forth therein, I have concluded that deportability has been thereby established (8 CFR 242.16(b)).

Respondent has not applied for any discretionary relief.

Respondent has specified Switzerland as the country to which deportation should be directed in the event respondent's deportation is required by law.

Order: It is ordered that the respondent be deported from

the United States in the manner provided by law on the charge(s) contained in the Order To Show Cause.

BERT F. KEARNEY,
Special Inquiry Officer.

Date: April 20, 1959.

Copy of this decision has been served upon the respondent.

Appeal: Waived.

BERT F. KEARNEY,
Special Inquiry Officer.

49 UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

458 SOUTH SPRING STREET,
LOS ANGELES 13, CALIFORNIA.
July 6, 1959.

File No. A8 382 428—Los Angeles

IN RE: GEORGE ERNST MARCEL FLEUTI

IN DEPORTATION PROCEEDINGS

In behalf of respondent: Mr. Richard F. Porter, Attorney at Law, 202 North Hawthorne Boulevard, Hawthorne, California.

In behalf of the service: John B. Bartos, Examining Officer.

Charges: Order: Excludable at entry—convicted of crime involving moral turpitude. Lodged: None.

MOTION TO SPECIAL INQUIRY OFFICER TO REOPEN PROCEEDINGS

The respondent is a 47-year-old single male, a native and citizen of Switzerland, who was lawfully admitted into the United States for permanent residence at Rouses Point, New York, on October 9, 1952 and who last entered the United States at San Ysidro, California during August, 1956 and was admitted as a returning resident alien.

An Order to Show Cause containing the above charge was issued on April 7, 1959, and the respondent was accorded a hearing under that order on April 14, 1959, and on April 20, 1959, and during the hearing the respondent admitted all of the allegations and the charge of deportability contained in the Order to Show Cause. Pursuant to this hearing he was

ordered deported from the United States on April 20, 1959.

The charge of deportability arose out of his conviction in the Superior Court of the State of California, in and for the County of Los Angeles, on March 9, 1956, as a result of his plea of guilty to violation of Section 288a, Penal Code of California, a felony as charged in the Information.

As a result of this conviction a judgment was entered that the respondent must pay a fine in the sum of Two Hundred Dollars within one week or serve one day in the County Jail for each Five Dollars of said fine not paid.

50 A stay of execution of the payment of claim was granted to March 16, 1956. Were the fine not paid it would have been necessary for the respondent to have served a term of forty days in the County Jail.

Section 288a of the Penal Code of the State of California reads as follows:

"Any persons participating in an act of copulating the mouth of one person with the sexual organ of another is punishable by imprisonment in the state prison for not exceeding 15 years, or by imprisonment in the county jail not to exceed one year; provided, however, whenever any person is found guilty of the offense specified herein, and it is charged and admitted or found to be true that he is more than 10 years older than his coparticipant in such an act, which coparticipant is under the age of 14, or that he has compelled the other's participation in such an act by force, violence, duress, menace, or threat of great bodily harm, he shall be punished by imprisonment in the state prison for not less than three years. The order of commitment shall expressly state whether a person convicted hereunder is more than 10 years older than his coparticipant and whether such coparticipant is under the age of 14. The order shall also state whether a person convicted hereunder has compelled coparticipation in his act by force, violence, duress, menace, or threat of great bodily harm."

Section 17 of the Penal Code of the State of California reads as follows:

"A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the

state prison, is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison."

Section 4 of the Act of September 3, 1954 provides as follows:

"Any alien who is excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of Section 1(3) of Title 18, United States Code, *by reason of the punishment actually imposed*, or who is excludable as one who admits the commission of such misdemeanor, may hereafter be granted a visa and admitted to the United States, if otherwise admissible: provided, that the alien has committed only one such offense."

From the foregoing, the respondent on March 9, 1956 was convicted of a misdemeanor, and by reason of the punishment actually imposed, such misdemeanor is classifiable as a petty offense.

51 By reason of this conviction, the respondent was not excludable at the time of his last entry into the United States at San Ysidro, California during [illegible], 1956. However, the respondent on August 27, 1953, in the Municipal Court of the Los Angeles Judicial District of the County of Los Angeles, State of California, was convicted as being wilfully and unlawfully a lewd and dissolute person and on November 5, 1958, at Oxnard, California, he was arrested as being a lewd vagrant.

In view of the foregoing, this hearing should be reopened for the presentation of further evidence in the case and for a further determination of deportability. There is attached hereto as evidence a certified copy of the aforementioned conviction of August 27, 1953, together with a fingerprinting return from the Federal Bureau of Investigation showing the arrest of November 5, 1958.

Motion: It Is Moved that the hearing in this case be reopened for the presentation of additional evidence and further hearing to determine deportability.

John B. Bartos.
JOHN B. BARTOS,
Examining Officer.

52 UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

Date: July 22, 1959
District: Los Angeles, California
File No. A-8 382 428

In behalf of respondent: Mr. Richard F. Porter, Attorney at Law, 202 North Hawthorne Boulevard, Hawthorne, California.

IN THE MATTER OF DEPORTATION PROCEEDINGS

against

GEORGE ERNST MARCEL FLEUTI, RESPONDENT

ORDER OF SPECIAL INQUIRY OFFICER GRANTING MOTION TO REOPEN

Upon Reading and Considering the attached motion, It Is Ordered that deportation proceedings herein be reopened.

Bert F. Kearney,
BERT F. KEARNEY,
Special Inquiry Officer.

BFK: em.

53 UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

File: A8 382 428—Los Angeles

MATTER OF GEORGE ERNST MARCEL FLEUTI, RESPONDENT

IN DEPORTATION PROCEEDINGS—TRANSCRIPT OF HEARING

Reopened.

Hearing held on August 5, 1959, at Los Angeles, California, before Special Inquiry Officer: Bert F. Kearney.

Recorded by Lori Parker. Language: English. Official Interpreter ————. Other Interpreter ————.

APPEARANCES

On behalf of Service: Richard L. Lay, Examining Officer.

On behalf of Respondent: Richard F. Porter, Esq., 202 No. Hawthorne Blvd., Hawthorne, California.

Form I-297.

(4-1-59.)

54 SPECIAL INQUIRY OFFICER (Hereinafter designated as INQUIRY OFFICER) TO COUNSEL:

Q. Proceedings in this case were ordered reopened by order of the Special Inquiry Officer dated July 22, 1959. Do you have a copy of that order, Mr. Porter?

A. I don't believe so, sir. I have an order dated July 29. Oh yes, we do have a copy.

Q. This order was based upon a motion submitted by the Government dated July 6, 1959. Do you have also a copy of that motion?

A. Yes, we do.

Q. Signed by John B. Bartos, Examining Officer?

A. Yes, sir.

Q. Is it stipulated that the respondent named in this order to reopen is the respondent here present this morning?

A. So stipulated.

Q. Are you ready to proceed?

A. We are ready.

INQUIRY OFFICER TO EXAMINING OFFICER:

Q. Are you ready, Mr. Lay?

A. Yes.

INQUIRY OFFICER TO RESPONDENT:

Q. Please stand and raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

A. Yes, sir.

Q. What is your name?

A. George "Marcel Ernst" Fleuti.

Q. Are you known as George "Ernst Marcel" Fleuti?

A. Yes, sir.

Q. Alright Mr. Lay, you may proceed.

55 BY EXAMINING OFFICER:

In conformity with the previously mentioned motion to reopen the proceedings in this case, I now present to the Special Inquiry Officer, Form I-261, additional charges of deportability, setting forth an additional charge of deportability and additional allegations of fact in support of that charge, numbered six through ten inclusive. May the record show that, at this time, I serve upon counsel for the respondent a signed copy of the same form and may the record further show that at the time of the notification of the hearing scheduled for this date, copies of the Form I-261 were furnished to the respondent and counsel as a prior notice of the intent to lodge the additional allegations and charge.

INQUIRY OFFICER TO COUNSEL:

Q. Do you have those copies, Mr. Porter?

A. Yes, we have.

Q. Is it stipulated that the respondent understands these additional allegations and the additional charge?

A. We will stipulate to that, yes your honor.

Q. Do you wish any further time to prepare a defense or meet this additional charge and the allegations?

A. Yes. I spoke to Mr. Lay about that and we would ask that we be given a period of ten days within which to furnish a written report which we will send to Mr. Lay for his perusal and if both sides are agreeable that a decision can be rendered based upon the report and the evidence which Mr. Lay now has, that there will be no further hearing, but if either party does not desire that a decision be rendered merely on that, that further hearing be had on this matter.

INQUIRY OFFICER TO EXAMINING OFFICER:

Q. I presume that Mr. Lay has some evidence that he wishes to offer this morning. Is that correct?

A. Yes. I discussed a possible stipulation with counsel for the respondent and under the proposed stipulation it was assumed that a plea would be made to the allegations, the new allegations, and the new charge this morning and
56 evidence will be presented by the Government as required under the conditions of the plea and the stipula-

tion regarding a medical report in behalf of the respondent. Insofar as I understood the matter, it was in anticipation that the hearing would be closed this morning on the basis of the plea and evidence submitted under an agreement that the report would be submitted through me for possible inclusion in the evidence without a reopening or that upon an informal request by either party the hearing would be reopened for receipt of the proposed evidence.

INQUIRY OFFICER TO COUNSEL:

Q. Is that your understanding, Mr. Porter?

A. Yes, that is.

Q. Then, are you willing, at this time, to answer and plead to the charge and the allegations in the additional charge of deportability?

A. Yes, we are.

Q. Do you waive reading of the additional allegations and the charge to the respondent?

A. Yes, we do.

Q. Does the respondent admit or deny the truth of allegation number 6?

A. Respondent admits the truth of that allegation.

Q. Does the respondent admit or deny the truth of allegation number 7?

A. He admits it to the extent that—well—perhaps—, could I make a qualified admission or denial on this or do they have to be——

Q. Well, if there is such a certification, that is not admitting, of course, that he is afflicted with a psychopathic personality, it is merely an allegation that he was certified on that date by an official as being so afflicted.

A. Well, with that understanding he would admit that I guess.

Q. It is not an admission, of course, that he is afflicted or was afflicted——

57 A. Just an admission that there was a certification.

Q. And that is admitted as being true?

A. Yes.

Q. Does the respondent admit or deny the truth of allegation number 8, which is again, the same type of allegation, that this official certified that the condition existed prior to the time of entry?

A. We admit allegation number 8.

Q. Do you admit or deny the truth of allegation number 9?

A. Respondent denies that one.

Q. Does the respondent admit or deny the truth of allegation number 10?

A. He also denies that one.

Q. Does the respondent admit or deny that he is deportable from the United States on the additional charge lodged?

A. He denies that.

Q. The Form I-261, additional charges of deportability, is received in evidence and marked Exhibit number 4.

INQUIRY OFFICER TO EXAMINING OFFICER:

Q. Alright, Mr. Lay, you may proceed.

A. In view of the nature of allegations 6, 7, and 8, as contained in Exhibit number 4, I desire, at this time, for completion of the record, to present through the respondent and his counsel, for introduction into the evidence in this proceedings, Public Health Service Form 124, Medical Certificate, and Form FS 398, Medical Examination of Visa Applicants, containing the certification of the Public Health official as set out in allegations 6, 7, and 8.

Q. The documents referred to are received in evidence and both marked as one Exhibit, number 5.

EXAMINING OFFICER TO RESPONDENT:

Q. Are you the same George Ernst Marcel Fleuti who
58 appeared before an officer of this Service at Ventura, California, on March 25, 1959, and made a sworn statement concerning your immigration status in the United States?

A. Yes, I am.

Q. I show to you and your counsel Form I-215A, affidavit, executed at that place, on that date, before Herbert B. Perkins, Investigator, consisting of two typewritten pages. At the bottom of the second page appears the signature of George Fleuti. I ask you if that is your signature.

A. Yes, it is.

Q. Did you read this document prior to signing it at that time?

A. Yes, I did.

Q. It is noted that on page one there appears, in the fourth paragraph of that page, a typewritten correction and a pen and ink correction, and in the last paragraph of that page appears a pen and ink correction near which, in each case, there are placed the initials G. F. Did you place those initials on those corrections?

A. Yes, I did.

Q. Were those corrections made in the transcript at your request?

A. Yes, it was my request.

Q. It is also noted, on the second page, in the fourth complete paragraph contained on that page, there appears a pen and ink correction bearing the initials G. F. Did you place those initials there and was that correction made at your request?

A. Yes, it was.

Q. At the time you executed this affidavit did you testify truthfully to the best of your knowledge and ability?

A. Yes.

Q. I desire, at this time, to offer the transcript of the statement just identified, for introduction into the evidence in this proceedings and may the record reflect that, at this time, the transcript is presented to counsel and respondent for their reading prior to its offer to the Special Inquiry Officer.

59 BY COUNSEL:

I will make a formal objection to its being received in evidence.

BY INQUIRY OFFICER:

Overruled. Received in evidence and marked Exhibit number 6.

EXAMINING OFFICER TO RESPONDENT:

Q. During this proceedings you have testified concerning an arrest and conviction in Los Angeles, California, in 1953. At this time I show to you and your counsel a certified copy

of complaint and transcript of docket in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, in the case of George M. Fleuti, Defendant, number 16,581. I ask you to examine these documents and state whether you are the George M. Fleuti named as the defendant therein and whether these records relate to the arrest and conviction of which you have testified in this proceedings.

BY COUNSEL:

We can stipulate to that, that that is a correct copy of the record and relates to the respondent.

BY EXAMINING OFFICER:

I desire to offer the document for introduction into the evidence in this proceedings.

BY INQUIRY OFFICER:

Received in evidence and marked Exhibit number 7, both the certified copy of the complaint and the transcript of docket, as one exhibit.

EXAMINING OFFICER TO RESPONDENT:

Q. Mr. Fleuti, have you been out of the United States for any period of time whatsoever since your last appearance here?

A. No, I haven't.

60 Q. On April 20, 1959?

A. No, I haven't.

Q. Is your marital and occupational status still the same as that to which you then testified?

A. I didn't understand, sir.

Q. Is your marital status still the same as that when you then testified? In other words, are you still single?

A. Oh, yes.

Q. Are you still employed in the same position?

A. Yes, I am.

Q. And is your financial condition, or your property assets in the United States, still approximately the same as then?

A. The same, yes.

Q. At this time I have no further evidence to offer nor further questions of the respondent.

INQUIRY OFFICER TO COUNSEL:

Q. Mr. Porter, do you wish to ask the respondent any questions or submit any evidence at this time?

A. We do not desire to do so at this time, sir.

Q. As I understand it, the hearing may be closed, at this time, with the stipulation that you will present a medical report from the psychiatrist to Mr. Lay.

A. Yes.

Q. And if for any reason either party desires the proceeding reopened, I will reopen on my own motion.

A. That is agreeable to us.

Q. How long a period of time will you require to submit this evidence?

A. We should like to have ten days, sir.

INQUIRY OFFICER TO EXAMINING OFFICER:

Q. Do you have anything further, Mr. Lay, other than to inspect this report?

61 A. Nothing further.

INQUIRY OFFICER TO RESPONDENT:

Then the hearing will be closed. As soon as possible after receipt of the stipulated evidence, I will prepare, in writing, a decision, setting forth a summary of the evidence, findings of fact, conclusions of law, and an order disposing of the case, copy of which decision and order will be served on your counsel. You will be allowed a period, after receipt thereof, not to exceed ten days in which to take an appeal, file any exceptions, or submit any brief or argument in the matter.

Hearing is closed.

* * * * *

I certify that to the best of my knowledge and belief the foregoing transcript is a true and correct report of everything that was stated during the course of the hearing, including oaths administered and rulings on objections, but excluding statements made off the record.

Lori Parker,
LORI PARKER,
Shorthand Reporter.

(8 6 59.)

George Fleuti vs.

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

File: A-8 382 428

MATTER OF GEORGE ERNST MARCEL FLEUTI, RESPONDENT

DEPORTATION PROCEEDINGS—TRANSCRIPT OF HEARING

Continued.

Reopened.

Hearing held on August 26, 1959, at Los Angeles, California, before Special Inquiry Officer Bert F. Kearney. Recorded by Ruthe D. Maruse, Stenographer. Language: English. Official Interpreter ..... Other Interpreter .....

APPEARANCES

On behalf of Service: Richard L. Lay, Examining Officer.

On behalf of Respondent: Richard F. Porter, Esquire, 202 North Hawthorne Blvd., Hawthorne, California.

Form I-297.

(4-1-59.)

Hearing conducted in the English Language.

BY SPECIAL INQUIRY OFFICER (Hereinafter designated INQUIRY OFFICER):

The proceedings in the case of the respondent, George Ernst Marcel Fleuti was closed on August 5th, 1959, with an agreement between the Examining Officer and Counsel for respondent, that if either the Examining Officer, or the Counsel for the respondent wished to cross-examine Dr. Dahlgren of the United States Public Health Service, or the psychiatrist who had submitted a report by Counsel for respondent, that the Special Inquiry Officer would reopen the proceedings on his own motion. I have received a communication from Mr. Porter, the attorney for the respondent, that he wishes to cross-examine Dr. Dahlgren, and in accordance with the request, have ordered the proceedings reopened on my own motion.

INQUIRY OFFICER TO COUNSEL:

Are you ready to proceed, Mr. Porter?

COUNSEL:

Yes, we are.

INQUIRY OFFICER TO EXAMINING OFFICER:

Mr. Lay?

EXAMINING OFFICER:

Yes, sir.

INQUIRY OFFICER TO RESPONDENT:

Q. Please stand and raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth; SO HELP YOU GOD?

A. I do.

Q. What is your name?

A. George Ernst Marcel Fleuti.

INQUIRY OFFICER TO EXAMINING OFFICER:

Mr. Lay, has Dr. Dahlgren been made available for cross-examination?

64 EXAMINING OFFICER:

Dr. Dahlgren is present. Prior to his presentation as a witness, I would desire the introduction in the evidence in this proceeding of the psychiatric report previously referred to between myself and Counsel for respondent, which was submitted in accordance with our agreement, to me. I have the report, dated August 10th, 1959, signed by David R. M. Harvey, M.D., Diplomate, American Board of Psychiatry and Neurology, and I would ask that it be entered in evidence in this proceeding, and I waive the right of cross-examination of Dr. Harvey in connection with its admission into the evidence.

INQUIRY OFFICER TO COUNSEL:

Is this the report, Mr. Porter?

COUNSEL:

Yes, I believe it is [examines same]. Yes, that is, thank you.

INQUIRY OFFICER:

The report referred to is received in evidence and marked Exhibit 8.

EXAMINING OFFICER TO INQUIRY OFFICER:

I am ready to present Dr. Dahlgren, and he may be sworn.

Witness Dahlgren called.

INQUIRY OFFICER TO WITNESS:

Q. Please stand and raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth; so help you God?

A. I do.

Q. What is your name and position?

A. Arthur R. Dahlgren, Senior Surgeon, United States Public Health Service.

INQUIRY OFFICER TO COUNSEL:

All right, Mr. Porter.

65 COUNSEL TO EXAMINING OFFICER:

Is there any direct examination of Dr. Dahlgren, Mr. Lay?

EXAMINING OFFICER:

I do not wish to have any direct. I believe it might be advantageous to the record if I might have Dr. Dahlgren identify his signature on Exhibit 5 of the proceeding, and also, as identification, or for acknowledgement of having examined Exhibit No. 8.

INQUIRY OFFICER TO EXAMINING OFFICER:

All right, you may proceed.

EXAMINING OFFICER TO WITNESS:

Q. Dr. Dahlgren, I show you two forms that have been previously entered in the evidence in this proceedings, together as Exhibit 5, bearing the signature of A. R. Dahlgren, Senior Surgeon, and ask you if that is your signature?

A. That is.

Q. Did you prepare these certifications or documents upon your examination of the respondent here in this proceeding?

A. They were prepared by the clerk in our office, signed by me.

Q. I also show to you a document which I believe you heard me identify and is now identified as Exhibit 8. Did you have

an opportunity before this proceeding to examine that document?

A. I did.

Q. For further clarification of the record, Doctor, Exhibit 5, indicates a certification by you of Psychopathic Personality in reference to the respondent. Is that terminology defined for your use by the regulations and statutes relating to the Public Health Service?

A. This terminology is expressed in the Manual for Medical Examination of Aliens to which we must comply in certifying these applicants. Does that answer your question?

Q. Yes, sir. In that manual, is it prescribed that a sexual deviate shall be classified as of psychopathic personality?

A. It does, if I may be allowed to quote the page and reference; this is the Manual for Medical Examination of Aliens we are in, Chapter 6, Page 5, under Paragraph No. 6, in
66 which the term, Psychopathic Personality, appears in print, and under subparagraph b. it states under this category, will be classified those applicants who are diagnosed as sexual deviates.

Q. The term, then, Psychopathic Personality, is a legal term as described by the manual; is that correct?

A. That is correct.

EXAMINING OFFICER:

I have no further questions of the witness.

INQUIRY OFFICER TO COUNSEL:

Please cross-examine, if you wish, Mr. Porter.

COUNSEL TO WITNESS:

Q. Mr. Dahlgren, what are your primary duties in your position at the present time?

A. I am Deputy Medical Officer in charge of the Out-Patient Clinic, U.S. Public Health Service, 424 Federal Building, Los Angeles.

Q. In that position, do you conduct both physical and psychiatric examinations?

A. We conduct physical examinations; we treat people; we treat peopl under medicare. Medicare is a Government term used for the treatment of the dependents of the Armed Services.

Q. This is what your office does; is that right?

A. We do many things in that office.

Q. What I am getting at, I ask what you, yourself, do personally?

A. Anything that has to be done.

Q. Do you, yourself, make both physical and psychiatric examinations?

A. I make no formal psychiatric examinations.

Q. Do you, yourself, have training in the field of psychiatry?

A. No formal training in the field of psychiatry.

Q. You are a medical doctor?

A. I am a M.D., licensed to practice in this State, and commissioned officer in the United States Public Health Service.

67 Q. Do you recall the date your department examined Mr. Fleuti?

A. I do.

Q. Do you recall approximately how much time you spent with Mr. Fleuti on that date?

A. Mr. Fleuti entered the clinic at 9:30 in the morning. The number of minutes he was actually there, I presume, an hour, plus or minus.

Q. And do you recall what the examination consisted of that was made of Mr. Fleuti, Doctor?

A. I do.

Q. Tell us, pretty much in detail, what it consisted of?

A. The history of Mr. Fleuti was reviewed, both as to medical illnesses, questions in regard to his sexual practices were asked, and there was a review of the records accompanying Mr. Fleuti, and it included x-ray, neurological report and urinalysis.

Q. I am correct in saying, you performed, more or less of the physical examination, in addition to this interview of taking the history; is that correct?

A. That is correct.

Q. And, you stated there were certain papers which accompanied this examination request; is that correct?

A. That is correct.

Q. And in the course of the examination, you would refer to the reports or the other papers you received?

A. They were reviewed as part of the medical history in this case.

Q. Do you recall whether Mr. Fleuti gave you any information which was not already covered in those reports which you received?

A. I would say that perhaps there were some details, not included in the statements.

Q. Then, I take it, you did not copy down what he said in the interview relating to his history; is that correct?

A. Notes were taken.

68 Q. When Mr. Fleuti was sent to you for examination, you were requested by the Immigration and Naturalization Service to render a report or make an evaluation?

A. That is correct.

Q. And, you have never acted as Mr. Fleuti's attending physician or seen him in any other capacity?

A. That is correct.

Q. Can you tell us briefly, Doctor, what factors or what evidence you based your evaluation of Mr. Fleuti on?

A. The history and the documentation of the, shall we say, arrest.

Q. Did you prepare a written report other than the certificate which you signed and which Mr. Fleuti referred to?

A. Two forms, F.S. 398, and a similar one, were the only forms prepared—P.H.S. 124.

Q. And, the other one was F.S. 398?

A. That is there.

COUNSEL TO EXAMINING OFFICER:

Could I take a glance at those documents.

EXAMINING OFFICER:

May the record reflect that for Counsel's use in regard to the forms just identified by the Doctor, there are furnished to him, the two forms made Exhibit 5, in these proceedings, and I would like that it be noted that the forms furnished by the Doctor and identified by him, are copies of Exhibit 5.

COUNSEL:

They appear to be identical.

INQUIRY OFFICER TO COUNSEL:

Are you satisfied with that statement, Mr. Porter?

COUNSEL:

I wonder——

COUNSEL TO WITNESS:

Q. Is this form at the end, Doctor; is that also prepared as a result of the examination?

A. No—to which are you referring? This is merely a
69 written statement to me regarding a subpoena.

COUNSEL:

Oh, I see.

EXAMINING OFFICER:

The record will show Mr. Porter is referring to a document in regard to a subpoena of the Doctor as a witness.

INQUIRY OFFICER TO COUNSEL:

Q. Mr. Lay has stated these certificates are copies of the Exhibits in the file, which you have just read.

A. Yes, that is true.

COUNSEL TO WITNESS:

Q. I believe you stated, Doctor, the evaluation which you made of Mr. Fleuti was based on the history and information which you elicited from him, and also the reports which you read?

A. That is correct.

Q. And, there was nothing in the physical examination part of the examination, I take it, which would be a basis that you used in determining this evaluation?

A. There would not.

Q. Perhaps, I could go just a minute into some medical terms; in the field of psychiatry, I believe that disorders are usually classified either constitutional disorders, meaning based on either organic or toxic causes—correct me if I am wrong—I am leading up to a question—constitutional disorders as opposed to functional disorders. Do you know of any such?

A. I would be inclined to answer, I served at the Service Center for Federal Prisoners for over five years. This is an

institution for the treatment of Federal prisoners, some of whom were psychiatric, some of whom were psychopaths. The term C.P.I. was used in referring to constitutional psychopathic inferiority. Now the term is used as psychopathic constitutional, which means this individual was so born.

70 Q. Well, now, that is what constitutional disorder means to you; is that correct?

A. Yes.

Q. And, do you know another category, called functional disorders?

A. Surely, we have functional diseases.

Q. And, the constitutional one is one which is based on some actual physical disorder, and I say—correct me if I am wrong—I am going on what I have read. As I understand it, Doctor, constitutional disorders ordinarily have either organic or toxic origins?

A. Toxic means a poison; now, constitutional means this individual was so born; that he was born this way; are you trying to make the difference between organic and functional disease?

Q. I imagine that is what it amounts to; well, in this particular case, Dr. Dahlgren, from your examination of Mr. Fleuti, would you consider him to be with constitutional disorder?

A. I would decline to answer that, and may I say, both by my review of the records and by my training and knowledge, and in conjunction with Dr. Harvey, this gentleman is a sexual deviate; there is no question as to that; your psychiatrist puts that in words. I will read to you, if you so choose. By my findings and by the instructions I must follow, I have to place these deviates in this category.

Q. I am trying to separate from the regulations you must follow and what might perhaps be the regular definitions.

A. We have to use certain terminology—and the rest of the world may not agree with this terminology; we are so ordered; therefore, we do; to quote, as an example, all of us know the disease, tuberculosis. To conform to the law in regards to immigrants, we cannot certify a patient as having arrested tuberculosis, as Class B. We must classify this as

pulmonary fibrosis, Class B. In common practice and among good doctors in the medical profession, this would be termed as Pulmonary Tuberculos, arrested. So it is with this case, we have to use certain words to conform and as we are told we must use it, so when Doctor Harvey says he cannot believe this man is a true psychopath, he has yet to say, this man is a sexual deviate.

Q. Could I ask you this question, Doctor; I copied down an extremely brief definition of psychopathic personality, and I would like to read it, and ask you whether it is a fair definition, according to the traditional medical terms, rather than the Government regulations which you follow, which
71 reads as follows: One who, though possessing normal intelligence, is or becomes personally, through hereditary or congenital conditions, constitutionally lacking in moral sensibility, in emotional control and the inhibition of will. Would you say, Doctor, that is more or less the standard definition of psychopathic personality?

A. That is fair enough.

Q. And, in that definition, it does have the constitutionally lacking, so as I understand the definition, there must be different constitutional disorders in order for a person to fit within that category; is that also true, would you say?

A. That is fundamentally true.

Q. And, I believe you said a minute ago, you would agree, according to traditional medical terms, Mr. Fleuti, would not be considered a psychopathic personality?

A. I have no strong feeling in that regard. May I read from this Manual in regard to the definition of psychopath; the legal term, psychopathic personality is equivalent to the medical designation, "personality disorder" which may be broadly defined as follows: These disorders are characterized by development defects or pathological trends in the personality structure, with minimal subjective anxiety and little or no distress. In most instances the disease is manifested by a lifelong pattern of action or behavior (acting out) rather than by mental or emotional symptoms.

Q. And, that is the definition which you follow in Mr. Fleuti's case; is that correct?

A. With this exception; immediately under this is paragraph (b), and once again, I quote: Under this legal category, will be classified those applicants who are diagnosed as sexual deviates.

Q. And, the portions of the regulations which you have just read; those constitute the criterion which you follow in evaluating Mr. Fleuti?

A. They would.

Q. And, you follow no other medical definitions or standards; is that correct?

A. We have admission, certified record of sexual deviation, and on that ground, this was so classified under the second paragraph in Chapter 6, Page 5.

72 Q. Your answer then would be yes, to my question, I believe. Perhaps I could rephrase the definition which you just read from the regulations; that is, the criterion which you used exclusively in evaluating Mr. Fleuti; is that correct?

A. Fundamentally, yes.

Q. Perhaps I could ask you this. Would you resort to some other definition or terms in addition to those in evaluating Mr. Fleuti?

A. Would I resort?——

Q. Would you make use of any other definitions or terms?

A. All words are terms; not when we have fellatio, copulation, oral fellatio; certainly we resort to what we know.

Q. I was not trying to trick you; I was trying to make sure the definition you read, you followed to the exclusion of any other definition in making these reports.

A. First of all, the point I am trying to review is this; we all agree, this is a case of sexual deviation; is that correct?

COUNSEL:

Well, I understand what you say; yes, sir.

WITNESS:

If it is not clear, allow me to read from your own psychiatric report.

COUNSEL:

I have read that; I am not trying preclude all points.

WITNESS:

For all orderly process; we must in some way classify this man—Class A, B, or C, or no classification, and to get a classification that is acceptable to all concerned, we must have to say this is a Class A disease, consequently, we have to give—is this a physical disease, a bacterial disease, or what? No, it is a psychiatric disease. Then we have to pigeonhole it under the regulation, psychopathic personality.

COUNSEL TO WITNESS:

Q. Just one further question, Doctor. Was there any other doctor who worked with you in the examination?

73 A. This manual states that in a Grade A disorder, two physicians, if available, shall sign this report; therefore, when the evidence so indicated this would be a Class A disease, my associate, at that time, Dr. Gunther Schmitt, made an independent brief examination and signed that report.

Q. I take it, your evaluation was based purely on your own findings; then, possibly what Dr. Schmitt might have told you; is that correct?

A. I saw Mr. Fleuti before Dr. Schmitt.

Q. Is the answer to the question, yes, the evaluation made by you was based on your findings?

A. Yes, history and documentary evidence, findings.

COUNSEL:

I believe that is all.

INQUIRY OFFICER TO EXAMINING OFFICER:

Any redirect, Mr. Lay?

EXAMINING OFFICER:

No, sir.

INQUIRY OFFICER TO WITNESS:

Q. Doctor, you stated in the first part of this examination, your certification was prepared by a clerk; was that done under your direction and supervision?

A. Technically, it is, when I say clerk, this was prepared by Ruth Hamataka, and as the written subscript indicates; she has more than one designation; she is actually the supervisor of a clerk and a medical stenographer.

Q. You dictated it and had the report prepared under your direction?

A. That is correct.

INQUIRY OFFICER TO COUNSEL:

Q. Anything further of the witness?

A. Nothing further.

74 INQUIRY OFFICER TO EXAMINING OFFICER:

Anything further?

EXAMINING OFFICER:

Nothing further.

INQUIRY OFFICER TO EXAMINING OFFICER:

Any further questions of the respondent?

EXAMINING OFFICER:

No further questions.

INQUIRY OFFICER TO COUNSEL:

Any further questions or evidence?

COUNSEL:

No further questions or evidence.

INQUIRY OFFICER TO RESPONDENT:

As soon as possible, I will prepare a decision and order in this case, disposing of the matter, a copy of which will be served on your attorney, Mr. Porter, and you will be allowed ten days to make an appeal, file any exceptions, or submit a brief or argument in the matter.

INQUIRY OFFICER:

Hearing closed.

HEARING CLOSED

I certify: That to the best of my knowledge and belief, the foregoing transcript is a true and correct report of everything that was stated during the course of the hearing, excluding statements made off the record. (9–4–59.)

Edythe D. Marusa,
EDYTHE D. MARUSA,
Reporter-Stenographer.

70 *George Fleuti vs.*

75 *Exhibit 4*

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

UNITED STATES OF AMERICA:

File No. A8 382 498

In the Matter of

George Ernst Marcel FLEUTI

Respondent.

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

ADDITIONAL CHARGES OF DEPORTABILITY

To: George Ernst Marcel Fleuti
305 North Montgomery
Ojai, California
(address)

There is hereby lodged against you the additional charge(s) that you are subject to be taken into custody and deported pursuant to the following provision(s) of law:

Section 241(a)(1) of the Immigration and Nationality Act, in that, at time of entry you were within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens afflicted with psychopathic personality, under Sec. 212(a)(4).

In support of the additional charge(s) I am to submitted the following factual allegation(s) in addition to those set forth in the order to show cause and notice of hearing:

(See Continuation Sheet attached hereto and made a part hereof)

EXHIBIT " 4 " AUG 5 1959 BJK

August 5 1959
Date

Richard E. [illegible]
Officer

Form I-261
(6-18-57)

GPO 974970

76

(Continuation Sheet) AG 332.14/8

admits 6. You were examined by a Medical Officer of the United States Public Health Service at Los Angeles, California on June 18, 1959;

admits 7. You were certified by an official of that Service, on that date, as being afflicted with "Class A Psychopathic Personality";

admits 8. That official further certified on that date, that this "condition existed prior to and at time of entry (August 1956)";

denies 9. You have been afflicted with the desire for sexual relations with members of your own sex for approximately the past twenty-two (22) years;

denies 10. You have indulged in the practice of sexual relations with members of your own sex at periodic intervals, averaging about once a month, for the past twenty-two (22) years.

AUG 5 1959
EXHIBIT " 4 "

George Fleuti vs.

Exhibit 5

PHS-12a
REVISED

CLASS ___ MEDICAL CERTIFICATE

STATION USPHS, Los Angeles, Calif. DATE 6-18-59

NAME FLEUTI, George Ernst Marcel

AGE	SEX	DATE OF ARRIVAL
46	M	

PORT OF ARRIVAL

CARRIER (Identifying marks)

CLASS Class A | MANIFEST NO ___ LINE ___

The above-described person has this day been examined and found to be afflicted with (diagnosis, including statutory classification when applicable):

Class A Psychopathic personality

Condition existed prior to and at time of entry (August 1956).

Type of disease or defect, or organ affected (when appropriate):

Substantiating data:

1. Laboratory reports: SEROLOGY 6-18-59: VDRL -Neg.

URINALYSIS 6-18-59: Specific Gravity 1.007; Albumin-0; Sugar-0

2. Other medical data, including results of special diagnostic procedures:

CHEST X-RAY 6-18-59: Essentially normal

EXHIBIT "5" AUG 5 1959 RJK

EXAMINERS:

NAME: A. R. DaMigren TITLE

A.R.DaMigren, Sr.Surg.(R)
U. S. Public Health Service
424 Federal Bldg., 312 N.Spring
Los Angeles 12, Calif.

/rh

78 Exhibit 5

Form FS-248 (May 1958) EDITION OBSOLETE

UNITED STATES OF AMERICA

MEDICAL EXAMINATION OF VISA APPLICANTS

PLACE: LOS ANGELES, CALIF. DATE: June 18, 1959

At the request of the American Consul at Los Angeles, Calif. File # 3-82 428

I certify that on the above date I examined GEORGE ERNEST MARCEL FLEUTI AGE 46 SEX M

I examined specifically for evidence of any of the following conditions:

CLASS A:

TUBERCULOSIS (in any form)

LEPROSY (Hansen's Disease)

DANGEROUS CONTAGIOUS DISEASES

- Actinomycosis
- Amebiasis
- Blastomycosis
- Chancroid
- Favus
- Filariasis
- Gonorrhea
- Granuloma Inguinale
- Keratoconjunctivitis Infectious
- Leishmaniasis
- Lymphogranuloma Venereum
- Mycetoma
- Paragonimiasis
- Ringworm of scalp
- Schistosomiasis
- Syphilis, infectious stage
- Trachoma
- Trypanosomiasis
- Yaws

MENTAL CONDITIONS:

- Feeble-mindedness (mental deficiency)
- Insanity
- Previous occurrence of one or more attacks of insanity
- Psychopathic personality
- Epilepsy (Idiopathic)
- Mental defect
- Narcotic drug addiction (Chronic alcoholism (See proviso, sec 34 USPHS Reg.)

CLASS B:

Physical Defect, Disease, or Disability Serious in Degree or Permanent in Nature Amounting to a Substantial Departure from Normal Physical Well Being.

CLASS C:

Minor Conditions.

(Check number (1), below or complete number (2))

My examination, including the X-ray and other reports below, revealed:

(1) No defect, disease, or disability ...

(2) Defect, disease, or disability, or previous occurrence of one or more attacks of insanity, as follows (give class—A, B, or C—diagnosis, and pertinent details*)

Class A Psychopathic personality

Condition existed prior to and at time of entry (August 1956).

Chest X-ray report 6-18-59: Essentially normal from Dr.

Blood serological report 6-18-59: VDRL Test - Negative from Dr.

Urinalysis report 6-18-59: Specific Gravity 1.007; Albumin-0; Sugar-0

EXHIBIT # 5 1959 AUG 5

SIGNATURE OF MEDICAL EXAMINER: L.K. Dahlgren, Sr. Surg. (R), U.S. Public Health Service
424 Federal Bldg., 312 N. Spring, Los Angeles 12, Calif.

*Continue on reverse side if necessary

FS-248

80 . . . *Exhibit 6*

Form I-215a
U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
(12-17-54)

IMMIGRATION AND NATURALIZATION SERVICE
RECORD OF SWORN STATEMENT IN AFFIDAVIT FORM

AFFIDAVIT

IN RE: GEORGE ERNST MARCEL FLEUTI . . . FILE NO. A-8 382 428
EXECUTED AT Ventura, California . . . DATE March 25, 1959

Before the following officer of the U. S. Immigration and Naturalization Service:

Herbert B. Perkins . . . (IN ENGLISH)

I, GEORGE ERNST MARCEL FLEUTI, acknowledge that the above-named officer has identified himself to me as an (Acting) Investigator of the United States Immigration and Naturalization Service authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to make a sworn statement before him in the above-named case. I understand that any statement which I make must be freely and voluntarily given and that it may be used by the Government as evidence in any proceedings against me or any other person. Being duly sworn, I make the following statement freely and voluntarily: that my true and correct name is GEORGE ERNST MARCEL FLEUTI, and I am a citizen of Switzerland. I was born at Bex, Switzerland, on July 5, 1912. I have never become a citizen of any country other than Switzerland.

I lived in Canada for about ten months before I came to live in the United States. I believe I landed in Canada, about December, 1951, then I came to live in the United States on October 9, 1952. I secured an Immigration Visa to live in the United States - I obtained that visa in Montreal, Canada. After that, I was admitted to the United States at Rouses Point, New York, on October 9, 1952.

Since that time, I have only been outside of the United States one time. I visited Mexico - Ensenada, I believe, and returned to the United States the same day. I returned to the United States at San Ysidro, California, about August, 1956. I am not too sure of the date, but it was about August, 1956. At that time, I presented my green Alien Registration Card, and was allowed to return to the United States.

I live at 305 North Montgomery Street, Ojai, California, and I work as a desk clerk at the Ojai Valley Inn, Ojai, California. I have Social Security Card Number 062-26-1286. I have worked at that same place for about five years now. I have lived at the same house on Montgomery Street, for about three and a half months. YEARS I live there alone.

I am single, have never been married, and have no children. I have cousins and an uncle here in the United States, but have no closer relatives here, and no one dependent on me for their support.

I have never been arrested for any offense of any kind in Canada, or Switzerland, but I have been arrested here in the United States three times; two times in Los Angeles, California, and one time in Oxnard, California. Both arrests in Los Angeles, were because I ~~indulged in homosexual relations with another man~~. I do not remember the dates exactly, but for the first arrest, I believe I was fined $100.00; for the second arrest, I was fined $200.00. I was not sentenced to jail either time, but naturally I had to remain in jail until I could get bail. The

of homosexual nature

EXHIBIT NO. 6
AUG 5 1959 DATE

81

SWORN STATEMENT OF GEORGE ERNST MARCEL FLUTI (Cont'd.)

third arrest was only on suspicion, and I was not convicted - the Court dismissed the case against me, so I was not fined.

I was the positive one, when I was arrested by the Los Angeles Police on the second arrest - by that, I mean that the other man copulated my private part. I did not do that for him.

I suppose I began to get those urges when I was about twenty years of age - while I was still living in Switzerland. I know that I did not get the urge when I was in my teens - I had no interest in such things then; it was later while I was already working in hotels in all parts of Switzerland. I had friends there who felt the same way, and we would copulate the private parts of each other. Some of the time, I was the positive one, and on other occasions, I would be the negative one - the one who would take the private part of the other man in my mouth. I do not know how often I performed such acts once they began, but I suppose it was when ever the opportunity would present itself, and one of my friends felt the same way at the same time.

In Canada, I did not have any such friends - I suppose that I did not live there long enough, but after I came to live in the United States, I ran across men who felt like I do, and we would copulate each other. Again, I can not say how often I would do such an act, but I suppose it was when ever the opportunity presented itself. As for frequency, I suppose I had such a homosexual act about once a month, maybe a little less than one time a month. It is difficult to say how many times I had homosexual relations with a man, but I suppose it was a little less than one time a month. I said that the homosexual urges began when I was about twenty. I really believe that I was more like 24 years of age; I guess that I have been having such relations with men for about twenty two years. I know it did not start until after I went back to Switzerland from England, and I was living in England in 1936.

In Switzerland, when ever I and one of my friends performed homosexual relations, we did it in a ~~hotel room~~, or an apartment. We, or I, was never caught, or arrested. In Los Angeles, I was unfortunate enough that I did it in a Park, and was arrested. Ever since that second arrest in Los Angeles, I have felt that the United States Immigration might be looking for me because I heard that such things were reported to Washington, so I have been very careful.

It has been explained to me that I might be considered illegally within the United States because of my homosexual relationships over the past years. I do not wish to leave the United States voluntarily, but ask that I be allowed a formal deportation hearing.

I have read the foregoing two pages of testimony and I understand it. I have placed my initials near any corrections that have been made. I certify that what is written is the truth and as I have stated while under oath to tell only the truth.

George Fluti

Read, signed, and sworn to before me at Ventura, California, on March 25, 1959.

EXHIBIT "6" BTK. Aug 5 1959

Herbert B. Parker
Investigator

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA 12698

The People of the State of California, PLAINTIFF,
vs.
GEORGE N. FLEUTI DEFENDANT.

Booking No. 5473

COMPLAINT

THIS CERTIFIED COPY IS GIVEN FREE OF CHARGE PURSUANT TO LAW SOLELY UPON THE CONDITION THAT IT IS TO BE USED FOR OFFICIAL BUSINESS.

Personally appeared before me, the undersigned, who, first being duly sworn, complains and says: That on or about AUG 23 1953, at and in Los Angeles City, in the County of Los Angeles, State of California, a misdemeanor, to-wit:

VIOLATION of Subsec 5 of Section 647 of the Penal Code of the State of California

was committed by GEORGE N. FLEUTI

(whose true name to affiant is unknown), who at the time and place last aforesaid,

was wilfully and unlawfully a lewd and dissolute person.

All of which is contrary to the law in such cases made and provided, and against the peace and dignity of the People of the State of California. Said Complainant therefore prays that a warrant may be issued for the arrest of said Defendant that he may be dealt with according to law.

Subscribed and sworn to before me on AUG 24 1953

W. E. Hogue
W. E. HOGUE

URBAN P. HOGUE, Clerk of the Municipal Court of Los Angeles Judicial District, in said County and State.

By P. Parsons (SEAL) Deputy Clerk

JAN 29 1959

Edith Peters

EXHIBIT # 7 BMK AUG 5 1959

83 *Complaint*

Filed Aug. 24, 1953. Urban F. Emme, Clerk of the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California. By B. Persons, Deputy Clerk. Issued by Roger Arnebergh, City Attorney, J. L. Denny. By J. L. Denny, Deputy City Attorney.

MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

GEORGE N. FLEUTI

Defendant.

No. 10,581

AUG 24 1953 $500.00 surety bond posted.

AUG 24 1953 Complaint filed sworn to by W. E. Vogle charging the Defendant with having on August 23, 1953, at Los Angeles City, in the County of Los Angeles, State of California, committed a misdemeanor, to-wit:

VIOLATION SUB 5 SECTION 647 PENAL CODE

AUG 24 1953 Cause called. Judge John D Barnes presiding. Both parties ready. People represented by J. Denny, (D.C.A.) Defendant represented by G. Levie, Deputy to court, this arraigned, informed of the charge against him and of his legal rights. Defendant gives true name as charged and asks time to plead. Ordered to appear and plead August 27, 1953, at 1:30 P.M. Bail up to stand.

AUG 27 1953 Cause called. Judge G Barnes presiding. Both parties ready. People represented by J. Denny, (D.C.A.) Defendant in Court and represented by G. Levie.

Defendant in court and enters his plea of not guilty of the offense charged. People and defendant with counsel in open court each personally waives jury trial.

Stipulate to try case on Police Report. Defendant adjudged guilty. Defendant waives time of sentence.

Defendant in court and having been duly arraigned for judgment, and there being no legal cause why sentence should not be pronounced. Whereupon it is ordered and adjudged by the Court that for the said offense of Violation of Sub 5 section 647 P. C. the said defendant be fined in the sum of 100 dollars and that in default of the payment of said fine on or before 5 O'clock P. M. of August 27, 1953, the said Defendant be imprisoned in the City Jail of said Los Angeles City in the proportion of one day's imprisonment for each and every 5 dollars of said fine until the said fine be wholly satisfied not exceeding 20 days, and that the defendant be discharged on payment of such portion of said fine as shall not have been satisfied by imprisonment at the rate above prescribed.

Fine $100.00 paid #17110.

Bail ordered exonerated.

Per section 290 Penal Code Notice sent to Sacramento.

I hereby certify that the above and foregoing is a full, true and correct copy and transcript of the docket in the within named cause.

JAN 28 1959

GEORGE J. HARBOUR
Clerk of Municipal Court of Los Angeles Judicial District
County of Los Angeles, State of California

By _____ Deputy

EXHIBIT # 7 AUG 1959

85 No. 16,581, Div. 30

Municipal Court of Los Angeles Judicial District

County of Los Angeles, State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

v.

GEORGE M. FLEUTI, DEFENDANT.

TRANSCRIPT OF DOCKET

86 *Counsel's Note Re Exhibit 8*

This exhibit, being a letter dated August 10, 1959, from David R. M. Harvey, M.D., to Richard F. Porter, Esq., Attorney at Law, is the same as "Exhibit 'A'" to the plaintiff's Complaint for Declaratory Judgment in the district court, which exhibit appears at pages 6-10 of this record. It is accordingly omitted from the print at this point.

87 UNITED STATES DEPARMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

SEPTEMBER 22, 1959.

File No. A8 382 428—Los Angeles

IN RE GEORGE ERNST MARCEL FLEUTI

IN DEPORTATION PROCEEDINGS

In behalf of respondent: Richard F. Porter, Esq. 202 North Hawthorne Boulevard, Hawthorne, California.

In behalf of the service: Richard L. Lay; Examining Officer (Los Angeles, California).

Charges: Order: Sec. 241(a)—I&N Act—Excludable at time of entry under Sec. 212(a)(9) of the Act—Conviction of a crime involving moral turpitude, to wit: Sex perversion. Lodged: Sec. 241(a)(1)—I&N Act—Excludable at time of entry under Sec. 212(a)(4) of the Act—Afflicted with psychopathic personality.

Application: Voluntary departure in lieu of deportation.

Order to show cause served: April 7, 1959.

Discussion: The respondent appeared before me in a hearing in deportation proceedings on April 20, 1959, and admitted as being true all of the factual allegations contained in the order to show cause and that he was subject to deportation on the charge set forth in the order. On the basis of these admissions a summary order of deportation was issued the same date.

On July 6, 1959, the Examining Officer for the Government moved to reopen the proceedings for the submission of additional evidence bearing on the issue of deportability, and the motion was granted by the Special Inquiry Officer on July 22, 1959.

88 The certified copy of the Information filed in the criminal proceedings relating to the respondent's conviction as alleged in allegation No. 5 in the order to show cause and admitted as being true recites that he was charged with *a* violation of Section 288a of the Penal Code of California, a *felony* (underscoring supplied), and a certified copy of the plea of guilty and judgment also refers to the offense charged as a felony (Ex. 2). In the motion to reopen the Examining Officer concedes that the foregoing conviction was for a misdemeanor and not a felony; that by reason of the punishment actually imposed such misdemeanor was classifiable as a petty offense and consequently the respondent was not subject to exclusion at the time of his last entry into the United States at San Ysidro, California, during August 1956 by virtue of the exemption from excludability provided for in Section 4 of the Act of September 3, 1954. The Special Inquiry Officer agrees with this conclusion for reasons which will be more fully set forth below.

Section 17 of the Penal Code of California defines a felony and a misdemeanor as follows:

"A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the state prison, is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison."

Section 288a of the Penal Code provides among other things that an offender may be punished by imprisonment in the state prison for not exceeding 15 years, or by imprisonment in the county jail not to exceed one year. Under certain circumstances, not present in this case, the punishment is mandatory that imprisonment shall be in the state prison for not less than three years. The judgment of the court (Ex. 5) shows that the respondent was sentenced to pay a fine of $200 within one week or serve one day in the county jail for each five dollars of said crime not paid. The fine was paid and he did not serve any term of imprisonment. It is clear that under the provisions of Section 17 of the Code the offense for which he was convicted must be considered a misdemeanor.

89 It having been found that he was convicted of a misdemeanor only, it must be determined if he is eligible for consideration under the provisions of Section 4 of the Act of September 3, 1954, as having committed an offense which is a misdemeanor classifiable as a petty offense under the provisions of Section 1(3) of Title 18, United States Code, by reason of the punishment actually imposed, and if he has committed only one such offense. If these questions are answered in the affirmative, then he would not be deportable on the charge contained in the order to show cause as an alien excludable at the time of entry under the provisions of Section 212 (a)(9) of the Immigration and Nationality Act because of conviction of a crime involving moral turpitude. The words of condition in the statute, "* * * provided, that the alien has committed only one such offense," are deemed to relate back and to mean only another offense which would, because of its commission, render the alien excludable. It follows that such other offense must necessarily involve moral turpitude, otherwise it would not constitute a ground of excludability.

Section 1(3) of Title 18, United States Code, provides:

"Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

The evidence of record shows that the respondent was also convicted in the Municipal Court, Los Angeles, California, on August 27, 1953, for violation of subdivision 5 of Section 647

of the Penal Code in that he was wilfully and unlawfully a lewd and dissolute person. He was sentenced to pay a fine of $100 or serve one day's imprisonment for each five dollars of the fine. The fine was paid (Ex. 7). It has been held that such an offense is not a crime involving moral turpitude (Matter of G– R–, 5 I&N Dec. 18).

It is concluded that the offense for which the respondent was convicted on March 9, 1956 (violation of Section 288a of the Penal Code) was a misdemeanor classifiable as a petty offense, and as he has not admitted the commission, or been convicted of more than this one crime which involves moral turpitude, he is not deportable on the charge contained in the order to show cause.

There was subsequently lodged in the proceeding the additional charge that he is subject to deportation pursuant to the provisions of Section 241(a)(1) of the Immigration and Nationality Act in that at the time of entry he was excluda-
90 able under Section 212(a)(4) of the Act as an alien afflicted with psychopathic personality (Ex. 4). He denied in the reopened hearing the truth of the lodged allegations Nos. 9 and 10, which alleged that he had been afflicted with the desire for sexual relations with members of his own sex for approximately the past 22 years and that he had indulged in the practice of sexual relations with members of his own sex at periodic intervals, averaging about once a month, for the past 22 years. He admitted the truth of the lodged allegations Nos. 6, 7 and 8 to the effect that he was examined by a medical officer of the United States Public Health Service at Los Angeles, California, on June 18, 1959; that he was certified by an official of that Service on that date as being afflicted with "Class A Psychopathic Personality;" and that this official further certified on that date that this condition existed prior to and at the time of entry in August 1956.

In a sworn statement made to an Immigration Officer at Ventura, California, on March 25, 1959 (Ex. 6) he admitted having engaged in homosexual acts on many occasions for about 22 years, both before and after his arrival in the United States, but that he had never been arrested for such conduct until he committed such an act in a public park in Los Angeles,

California. Since his second arrest he has taken precautions not to be caught, because he believed that if he were, he would be in difficulty with the Immigration authorities. These admissions of the respondent have not been controverted. He admitted that he had read this statement before signing it and that he had testified truthfully. An objection to the statement's introduction in evidence was overruled (8 C.F.R. 242.14 (c)). He also denied deportability on the additional charge lodged in the reopened hearing.

On June 18, 1959, he was certified by a United States Public Health Service Senior Surgeon as being afflicted with a Class A condition, Psychopathic Personality, and that this condition existed prior to and at the time of his entry into the United States in August 1956 (Ex. 5). This certification was based upon a personal examination and interview of the respondent by the medical officer who prepared it. There was no substantial fact or facts developed in cross-examination of this medical officer that would tend to disprove his finding that the respondent was at the time of entry a psychopathic personality. In fact, a report of examination by the respondent's own psychiatrist conducted on May 20, June 22, July 8, and August 7, 1959, shows that his condition was diagnosed as "Sexual deviation, homosexuality, now under control (Ex. 8 f. 91 . This report further recites that his deviation is not sufficient to justify the diagnosis of psychopathic personality and that he is not a danger to any other person. This last conclusion and references in the report to the California Code regarding sexual psychopaths are not relevant to the deportation charge.

The term "psychopathic personality" is a legal term and is equivalent to the medical designation of "personality disorder." It also covers disorders other than those manifested by a sexual deviate, although the latter must be classified as a psychopathic personality (United States Public Health Service Manual for Medical Examination of Aliens, Part II, Chapter 6, Section A, Paragraph 6).

The question of whether homosexuals or sex perverts are persons of psychopathic personality has been thoroughly and exhaustively discussed in the decision of the Board of Immi-

gration Appeals in Matter of P–, 7 I&N Dec. 258. The facts in that case are closely analogous to the present case. In Matter of P– the Board found that the excluding provisions of Section 212(a)(4) of the Immigration and Nationality Act relating to persons of psychopathic personality include homosexuals and sexual perverts and that the respondent's admissions, of homosexual tendencies and homosexual acts prior to entry plus the certification, based on those admissions, of the United States Public Health Service that he was a person of psychopathic personality was sufficient to support a finding of deportability under Section 241(a)(1) of the Act as having been excludable at the time of entry as a person afflicted with psychopathic personality. In this connection see also U.S. v. Flores-Rodriguez, 237 F. 2d 405, (2 Cir. 1956).

It is concluded on the basis of all of the evidence of record and the cited cases that the charge lodged at the reopened hearing is sustained.

DISCUSSION AS TO ELIGIBILITY FOR DISCRETIONARY RELIEF: The respondent is a 47-year-old single male, a native and citizen of Switzerland. He has never been married. He was admitted to the United States for permanent residence at Rouses Point, New York, on October 9, 1952, and except for a one-day visit to Ensenada, Mexico, in August of 1956, he has resided continuously in this country since that entry. He is and has been for several years past employed as a hotel desk clerk. The Special Inquiry Officer, after carefully con-
92 sidering all of the facts and circumstances in this case, has concluded that this is not the type of case in which the discretionary relief of voluntary departure should be granted, and his application for voluntary departure will be denied as a matter of administrative discretion. He is not eligible for any other type of discretionary relief from deportation. He designated Switzerland as the country to which he desired to be deported if found subject to deportation and ordered deported from the United States.

Findings of fact: Upon the basis of all of the evidence of record it is found:

(1) That the respondent is an alien, a native and citizen of Switzerland;

(2) That the respondent last entered the United States at San Ysidro, California, in August 1956;

(3) That the respondent was lawfully admitted for permanent residence at Rouses Point, New York, on October 9, 1952;

(4) That at the time of the respondent's last entry into the United States he was admitted to this country as a returning resident alien;

(5) That the respondent was convicted in the Superior Court in and for the County of Los Angeles, State of California, on March 9, 1954, for violation of Section 288a of the Penal Code of California, committed on or about February 16, 1956, and for which offense he was sentenced to pay a fine in the sum of $200 within one week or serve one day in the county jail for each five dollars of said fine not paid;

(6) That on June 18, 1959, the respondent was examined by a Senior Surgeon of the United States Public Health Service at Los Angeles, California, and certified by that officer as being afflicted with a Class A condition, "Psychopathic Personality," which condition existed prior to and at the time of his entry into the United States in August of 1956.

Conclusions of law: On the basis of the foregoing findings of fact it is concluded:

(1) That under the provisions of Section 4 of the Act of September 3, 1954, the respondent was *not* inadmissible to the United States at the time of his last entry under the provisions of Section 212(a)(9) of the Immigration and Nationality Act because of a conviction of a misdemeanor which was classifiable as a petty offense under the provisions of Section 1(3) of Title 18, United States Code, by reason of the punishment actually imposed.

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(2) That under the provisions of Section 241(a)(1) of the Immigration and Nationality Act the respondent is not subject to deportation on the ground that at the time of entry he was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, aliens who have been convicted of a crime involving moral turpitude, under Section 212(a)(9) of the Act: Sex perversion;

(3) That under the provisions of Section 241(a)(1) of the Immigration and Nationality Act the respondent is subject to

eportation on the ground that at the time of entry he was within one or more of the classes of aliens excludable by the aw existing at the time of such entry, to wit, aliens afflicted vith Psychopathic Personality, under Section 212(a)(4) of the ct.

Order: It is ordered that the respondent be deported from United States in the manner provided by law on the lodged rge only.

Bert F. Kearney,
BERT F. KEARNEY,
Special Inquiry Officer.

BFK: cgr.

UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS

NOVEMBER 20, 1959.

File: A-8382428—Los Angeles

IN RE GEORGE ERNST MARCEL FLEUTI

IN DEPORTATION PROCEEDINGS—APPEAL

On behalf of respondent: Richard F. Porter, Esquire, 202 orth Hawthorne Boulevard, Hawthorne, California.

Charges: Order: Section 241(a)(1), Act of 1952 (8 USC 251(a)(1))—Excludable at time of entry under Section 212)(9) of the Act (8 USC 1182(a)(9))—Convicted of a crime olving moral turpitude, to wit, sex perversion. Lodged: tion 241(a)(1), Act of 1952 (8 USC 1251(a)(1))—Exclud- e at time of entry under Section 212(a)(4) of the Act (8 S 1182(a)(4))—Afflicted with psychopathic personality.

pplication: Voluntary departure.

he respondent, a 47-year-old alien, a native and citizen of tzerland, appeals from a decision on September 22, 1959 ecting deportation on the charge lodged in the proceedings, amely, that under Section 241(a)(1) of the Immigration and Nationality Act the respondent is deportable, in that, he was xcludable at time of entry in August 1956 under Section 212 a)(4) of the Act as an alien afflicted with psychopathic per- sonality. The charge in the Order to Show Cause, which is

assigned under Section 241(a)(1) of the Immigration and Nationality Act, alleging that the subject was excludable at time of entry under Section 212(a)(9) of the Act, as one convicted of a crime involving moral turpitude, to wit: sex pervision, has not been sustained.

Counsel excepts to the finding that the alien is deportable on the charge lodged in the hearing. He also excepts to the finding that the alien's application for voluntary departure should be denied (8 USC 1254(e)).

There have been a series of hearings in this case. Following the initial hearing the special inquiry officer ordered deportation on April 20, 1959. On motion presented by the examining officer on July 6, 1959, to reopen the hearing, an order was entered granting the motion on July 22, 1959. This appeal comes forward following the reopened hearing.

The respondent was admitted to the United States on October 9, 1952 at Rouses Point, New York for permanent residence. He last entered at San Ysidro, California during August 1956 as a legally resident alien returning to resume residence. Exhibit 2 in the record is a document showing the respondent's conviction in Los Angeles County, California on plea of guilty on March 16, 1956, to violation of Section 288a of the Penal Code of California (sex perversion, committed February 16, 1956). He was directed to pay a fine of $200, or to serve one week in jail for each five dollars of fine not paid. The fine was paid. The special inquiry officer has correctly found that the offense involves moral turpitude.

Exhibit 7 is a court record showing the respondent's conviction in the Municipal Court, Los Angeles County, California on August 27, 1953 for violation of subdivision 5 of Section 647 of the Penal Code of that state, in that, he was wilfully and unlawfully a lewd and dissolute person. He was sentenced to pay a fine of $100 or serve one day's imprisonment for each five dollars of the fine. The fine was paid (Exhibit 7). This crime does not involve the element of moral turpitude (Matter of G–R–, 5 I&N Dec. 18).

The special inquiry officer has decided that within the provisions of Section 17, California Penal Code, defining felonies and misdemeanors, the alien's conviction in 1956 may be classi-

fied as a misdemeanor within Section 1(3) of Title 18 USC. Since the conviction in 1953 does not involve moral turpitude, consideration under the provisions of Section 4 of the Act of September 3, 1954 (Public Law 770) is not precluded to wipe out the conviction in 1956 as a ground for deportation (Matter of C–, 6 I&N Dec. 331). Accordingly, the respondent was not excludable at the time of last entry as charged in the Order to Show Cause. As previously stated, that charge has not been sustained.

96 The order for deportation is based on the charge lodged in the reopened hearing. The special inquiry officer has carefully set forth the evidence supporting such charge. The evidence consists of a medical certification, the testimony of a physician of the United States Public Health Service, the court records of two convictions, and a statement by the respondent's private physician-psychiatrist. The special inquiry officer has made specific findings and conclusions relative to the charge on which the deportation order is based.

Counsel alleges that the Government has not shown by preponderance of the evidence that the respondent is deportable. With respect to that allegation, counsel disagrees with Finding of Fact No. 6, namely, that on June 18, 1959 the respondent was certified by a senior surgeon of the United States Public Health Service as being afflicted with a Class A condition, "psychopathic personality", which condition existed prior to, and at the time of last entry in August 1956. The medical certificate and the testimony of the certifying physician are evidence which, in part, establishes that the respondent was excludable at time of last entry (p. 26 and Exhibit 5).

In adjudicating the issue of deportability in this, an expulsion proceeding, all of the relevant evidence pertaining to the question in issue may be considered. In summarizing the evidence, relating to the allegations in the lodged charge herein, the special inquiry officer has discussed all of the evidence consisting of the medical certification (Exhibit 5), the admissions made by this subject to a Service investigator under oath on March 25, 1959 (Exhibit 6), the court records showing criminal convictions (Exhibits 2 and 7), and other testimony and statements. Aside from the court records of criminal convic-

tions for improper sexual behavior during the past six years (Exhibits 2 and 7), which cannot be disputed by the respondent, the alien who is age 47 years has admitted that he has had homosexual urges (the urge to commit homosexual acts with men) since he was age 20 years; and that he has committed acts of sex perversion, intermittently and frequently for a period of 22 years (Exhibit 6).

The respondent's medical adviser, a psychiatrist, who has examined him on four occasions has diagnosed his condition as "sexual deviation, homosexuality, now under control" (Exhibit 8). The senior surgeon, United States Public Health Service, A. R. Dahlgren who gave the certification on
97 June 18, 1959, had before him at that time the alien's history including admissions of numerous acts of sexual relations with men. Dr. Dahlgren has testified in the reopened hearing and has submitted to cross examination. He has explained that the legal term, psychopathic personality, is equivalent to the medical designation "personality disorders" which may be broadly defined; and that they are characterized by development defects or pathological trend in the personality structure, with minimal subjective activity and little or no distress. In most instances the disease is manifested by a life-long pattern of action or behavior rather than by mental or emotional symptoms. He has also explained that within the definitions and the instructions set forth in the Manual for Medical Examination of Aliens the respondent's condition is diagnosed as sexual deviation (Part II, Class A condition, Chapter 6, Section A, 6, Manual for Medical Examination of Aliens) (pp. 30–34 inclusive and Exhibits 5, 6).[1]

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[1] 6. Psychopathic personality.

a. The legal term "psychopathic personality" is equivalent to the medical designation "personality disorder," which may be broadly defined as follows: "These disorders are characterized by developmental defects or pathological trends in the personality structure, with minimal subjective anxiety and little or no distress. In most instances, the disorder is manifested by a life-long pattern of action or behavior (acting out), rather than by mental or emotional symptoms". An example of such a certificate is Class A, Psychopathic personality, Inadequate personality.

b. *Under this legal category will be classified those applicants who are diagnosed as sexual deviates.* In the medical examination of aliens this

We find that the alien's admissions, the testimony of a physician and his medical certification, and court documents in this record, undisputed, places the respondent's condition within the allegations set forth in the charge lodged in this hearing. We further find that such affliction or condition existed at time of his last entry and constituted a ground of excludability. We do not find from the fact that the respondent is receiving treatment by Dr. R. M. Harvey, a psychiatrist, who is of the opinion that the condition may be controlled if the alien is under the supervision of a psychiatrist, is in any way in conflict with the medical findings of Dr. A. R. Dahlgren on June 18, 1959. Nor do we find that treatment and control of the affliction now is a defense to a finding of deportability. The contentions of counsel are without merit. The allegations in the charge upon which deportability is based are supported by reasonable, substantial and probative evidence.

98 The special inquiry officer has denied an application for voluntary departure as a matter of administrative discretion. This means that, although the respondent may meet all the requirements for the relief he seeks, his request for relief has been denied as a matter of discretion. Under the factual situation, the Board has no jurisdiction to change the decision of the special inquiry officer, with regard to the exercise of discretion, unless there have been mistakes, errors, prejudice or abuse of discretion. Our careful review of the proceedings reveals no basis for change of the special inquiry officer's decision. The appeal will be dismissed.

Order: It is ordered that the appeal in this case be dismissed.

THOS. G. FINUCANE, *Chairman.*

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is a difficult diagnosis to establish. However, the examiner should assist the consular officer when possible in evaluating an applicant thought to come in this category.

102 In United States Court of Appeals for the Ninth Circuit

No. 17,325

GEORGE FLEUTI, APPELLANT-PETITIONER

v.

GEORGE K. ROSENBERG, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE, LOS ANGELES, CALIFORNIA, APPELLEE-RESPONDENT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Opinion

April 17, 1962

Before CHAMBERS, HAMLEY and DUNIWAY, Circuit Judges

HAMLEY, Circuit Judge:

George Fleuti, a resident alien, was ordered deported by the Immigration and Naturalization Service on the ground that at the time of his entry he was a "psychopathic personality." Having exhausted his administrative remedies, Fleuti brought this action in the district court to review that order. The district court entered judgment upholding the order of deportation, and Fleuti appeals.

For the reasons indicated in the margin we consider the case as before us for initial review, pursuant to 8 U.S.C., § 1105a, and 5 U.S.C., § 1031, et seq., rather than on appeal from a district court judgment.[1] Fleuti will be re-

[1] Section 5(a) of the Act of September 26, 1961, 75 Stat. 651, added a new section 106(a) to the Immigration and Nationality Act, 8 U.S.C., § 1105a. This new section provides that the procedure prescribed for the review of other federal agency orders (5 U.S.C., § 1031, et seq.) shall be the sole and exclusive procedure for the judicial review of deportation orders entered pursuant to section 242(b) of the Immigration and Nationality Act. Section 5(b) of the Act of September 26, 1961, provides that any judicial proceeding to review an order of deportation "which is pending unheard" in any district court on the effective date of that section (October 26, 1961), with exceptions not here relevant, shall be transferred for determination to the court of appeals having jurisdiction to entertain a petition for review under that section.

103 garded as the petitioner and George K. Rosenberg, District Director of Immigration and Naturalization Service, Los Angeles, as respondent. Under the circumstances of this case our reviewing function is substantially the same as was that of the district court which initially reviewed the deportation order.

Fleuti contends that the order is invalid because not based upon reasonable, substantial and probative evidence. He further contends that execution of the order would violate the Due Process Clause of the Fifth Amendment because, as applied to him, the statute in using the term "psychopathic personality" is void for vagueness.

Fleuti is a native and citizen of Switzerland. He was admitted to the United States for permanent residence on October 9, 1952. He remained in this country until August, 1956, when he visited for a few hours in Ensenada, Mexico. He then re-entered as a returning resident alien and has remained in this country since then.

104 The charges upon which the deportation order is based were filed against Fleuti on August 5, 1959. It was alleged that Fleuti is deportable because, at the time of his 1956 entry, he was within a class of aliens excludable by the law existing at the time of such entry, namely aliens afflicted with "psychopathic personality." The statutes cited as authorizing deportation on such a showing are sections 241(a) and

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The case before us was disposed of by the district court prior to October 26, 1961, thus a transfer of the cause to this court under the statutory provision referred to above was not required at that time. We note, sua sponte, however, that Fleuti seeks to restrain the enforcement of a deportation statute on the ground, which we find substantial, that the statute is unconstitutional as applied to him. The case should therefore have been heard by a district court of three judges. 28 U.S.C. § 2282; Wolf v. Boyd, 9 Cir. 287 F. 2d 520.

But if we now remand the case because of failure to convene a three-judge court, it would become a judicial proceeding "which is pending unheard" before the district court. It would then be necessary for the district court to transfer the case back to us as provided in section 5(b) of the Act of September 26, 1961 referred to above. It follows that, to avoid circuity, this court should consider the case as having been so remanded and transferred back and therefore now before us as an initial judicial review pursuant to 8 U.S.C., § 1105a and 5 U.S.C., § 1031 et seq.

212(a)(4) of the Immigration and Nationality Act, 8 U.S.C., §§ 1251(a) and 1182(a)(4).[2]

It was not stated in the formal charges what specific physical or mental condition Fleuti had at the time of his 1956 entry which brought him at that time within the class of aliens afflicted with "psychopathic personality." Attached to the charges, however, was a sheet on which certain factual allegations were listed, as set out in the margin.[3] It is thereby indicated that the particular condition thought to bring Fleuti within the stated class was his alleged affliction with the desire for, and regular indulgence in, homosexual practices over a long period of years.

105

It is an established principle of federal adjudication that questions of constitutional law are not to be dealt with in advance of the necessity of deciding them. See Communist Party v. Subversive Activities Control Board, 367 U.S. 1, 72. It would therefore at first blush appear that we ought to first consider Fleuti's contention that the deportation order is not based upon adequate evidence, on the theory that if this ques-

[2] Section 241(a) reads in part:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who

"(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry: * * *"

Section 212(a)(4) reads in part:

"(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

* * * * * *

"(4) Aliens afflicted with psychopathic personality, epilepsy, or a mental defect; * * *"

The quoted language of section 212(a)(4) was added to the statute on June 27, 1952, which was before Fleuti's first entry, but did not become effective until December 24, 1952, which was after that entry.

[3] You were examined by a Medical Officer of the United States Public Health Service at Los Angeles, California on June 18, 1959; you were certified by an official of that Service, on that date, as being afflicted with "Class A Psychopathic Personality"; that official further certified on that date, that this "condition existed prior to and at the time of entry (August 1956)"; you have been afflicted with the desire for sexual relations with members of your own sex for approximately the past twenty-two (22) years; you have indulged in the practice of sexual relations with members of your own sex at periodic intervals, averaging about once a month, for the past twenty-two (22) years.

tion is decided in his favor we need not reach the constitutional question which he poses.

The difficulty in following this course, however, lies in the fact that: (1) in order to determine whether the evidence is sufficient it is necessary to decide what is meant by "psychopathic personality"; (2) this term is not defined in the statute and respondent relies upon the legislative history in order to establish the meaning of the term;[1] but (3) if the statute, judged on its face and as applied to Fleuti, is void for vagueness, access may not be had to the legislative history in order to establish its meaning.[2]

106 It is therefore necessary for us to proceed at once to the constitutional question.

The question of whether a statute is void for vagueness most frequently arises in criminal prosecutions. In such cases the

[1] Arguing that the term was intended to include, among others, anyone who was a homosexual or sex pervert at the time of entry, respondent calls attention to S. Rept. No 1137, 82nd Cong., 2nd Sess. (1952). That report contains the following statement:

"Existing law does not specifically provide for the exclusion of homosexuals and sex perverts. The provisions of S. 716 which specifically excluded homosexuals and sex perverts as a separate excludable class do not appear in the instant bill. The Public Health Service has advised that the provision for the exclusion of aliens afflicted with psychopathic personality or a mental defect which appears in the instant bill is sufficiently broad to provide for the exclusion of homosexuals and sex perverts. This change of nomenclature is not to be construed in any way as modifying the intent to exclude all aliens who are sexual deviates."

[2] The doctrine of void-for-vagueness is premised in part on the fiction that all persons in fact know the contents of statutes. But this fiction does not extend to the point of assuming that all persons in fact know the relatively inaccessible legislative history of statutes. Thus it is uniformly held that in applying the doctrine, a federal statute must be judged on its face. See United States v. Harriss, 347 U.S. 612, 617; United States v. Spector, 343 U.S. 169, 171.

Once it is ascertained that the language of the statute is sufficiently definite to satisfy due process standards, the legislative history may become relevant. But the function of such history is not to provide support for an otherwise deficient law; rather it is to assist the court in best effectuating the legislative intent by possible construction and limitation of the statutory language. Hence, if the challenged class of offenses seems plainly within the terms of the statute, legislative history may be consulted to verify this conclusion. See Harriss, supra, at 618, 620-622.

[3] See 109 U. Pa. L. Rev. 67 for an extensive discussion of the vagueness doctrine in the Supreme Court.

underlying principle is said to be that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. United States v. Harriss, 347 U.S. 612, 617.

But the Supreme Court has also applied this principle in civil proceedings, and in so doing has expressly ruled that a criminal penalty need not be involved. See Small Company v. American Sugar Refining Company, 267 U.S. 233, 239, where the court said, referring to other decisions in which the principle had been applied:

"* * * It was not the criminal penalty that was held invalid, but the exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all."

In Jordan v. DeGeorge, 341 U.S. 223, the court examined for vagueness, a statute which had been invoked in ordering deportation of that appellant. The court stated that it would do so notwithstanding the fact that it was not a criminal statute.[1] In that case the deportation had been ordered because a proscribed event had occurred after the alien
107 entered this country, namely, "conviction in this country of any crime involving moral turpitude." The particular crime which was held to involve moral turpitude was conspiracy to defraud the United States of taxes on distilled spirits.

In the case before us, deportation has been ordered not because of any event occurring or act committed after Fleuti's last entry in August, 1956, but on the ground that, at the time of that entry, he was excludable as a "psychopathic personality."

However, in proving that, at the time of such entry, Fleuti was a "psychopathic personality" the Immigration and Naturalization Service has not relied exclusively upon evidence concerning Fleuti's condition prior to entry.[2] It presented evidence showing not only that Fleuti had regularly engaged

[1] It was held, as a result of that examination, that the particular statute there in question was not unconstitutionally vague.

[2] Nor was it required to, absent a question of statutory vagueness. See United States ex rel. Powlowski v. Day, 2 Cir., 33 F. 2d 267.

in homosexual practices prior to his first entry in 1952, but that he had continued such practices after that entry and also after his second entry in 1956.[9] The finding that he was a "psychopathic personality" at the time of the 1956 entry is therefore based in part upon post-entry behavior.

Insofar as the record reveals, continuance of homosexual practices after Fleuti entered this country in 1952, and again in 1956, was not compulsive, but was a matter of choice. It follows that if, by reason of vagueness, the statute failed to advise him that homosexual practices conclusively evidence a "psychopathic personality" Fleuti was substantially prejudiced. As in the case of a vague criminal statute, he would thereby be deprived of notice that unless he refrained from such conduct harsh results might follow.

108 While the post-entry conduct was not itself the ground of deportation, but was used as evidence of a pre-entry deportable condition, the prejudice would nevertheless be substantial. The examiner might have found the evidence of pre-entry homosexual practices sufficient to support a finding of "psychopathic personality." But whether such a finding would have been entered in 1959, based on pre-entry conduct prior to October 9, 1952, or whether on such facts a charge would even have been brought, is a matter of speculation.[10]

[9] This evidence consisted of Fleuti's acknowledged history of such practices from 1936 to 1959, and proof of two convictions obtained against him in the courts of California. One of these convictions, obtained in the Municipal Court of Los Angeles, under section 647(5) of the Penal Code of California, relating to lewd and dissolute persons, was for an act committed on August 23, 1953. The other, obtained in the Los Angeles Superior Court under section 288a of the Penal Code of California, relating to homosexual acts, was for an act committed February 16, 1956.

[10] It was originally sought to deport Fleuti, pursuant to sections 241(a) and 212(a)(9) of the Immigration and Nationality Act, 8 U.S.C., §§ 1251 (a)(1), 1182(a)(9), as a resident alien who had been convicted of a crime involving moral turpitude. The conviction relied upon was one of those referred to in footnote 9 above. A summary order of deportation was issued on the basis of that charge. It was later set aside by the examining officer, however, on the ground that the conviction relied upon, being a misdemeanor classified as a petty offense, was not one for which deportation could be ordered, in view of certain exceptions contained in the Act. But at the same time that this deportation order was set aside, the administrative proceedings were reopened to receive and consider the new charge that Fleuti was a "psychopathic personality" at the time of his last entry.

The fact that the examining officer chose to rely heavily upon post-entry behavior is some indication that a charge might not have been filed, or a finding entered, on pre-entry behavior alone.

From what has just been said, it will be observed that, for the purposes of this discussion, we regard Fleuti's conduct between his entry in 1952 and his brief absence in 1956, along with his conduct after his re-entry in 1956, as post-entry behavior. If, during the years 1952 to 1956, Fleuti was prejudiced by reason of the vagueness of the statute, he may assert such prejudice now, notwithstanding his temporary leave taking in 1956. The prejudice occurred while he was a resident alien and his constitutional rights as such, acquired during that period, were not "washed out" by his afternoon visit to Ensenada, Mexico.

The question which remains to be decided is whether the deportation statute, in using the undefined term "psychopathic personality" is void for vagueness, as applied in this case."[11]

109 In determining whether a statute is vague in the constitutional sense, the test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. Jordan v. DeGeorge, at page 231. Or, as stated in United States v. Harriss, 347 U.S. 612, 617, and United States v. Petrillo, 332 U.S. 1, 7, would persons of "ordinary intelligence" be able to know what the statute means.

It has already been pointed out (see note 5 above) that in determining whether a statute is void for vagueness, the statute must be judged on its face, without reference to legislative history. We are mindful of the fact that language which is otherwise vague may be made sufficiently certain by definitive construction, even though the language construed is found in other statutes. Jordan, supra at 227. However, at the time this post-entry conduct occurred, there was no decisional law as

[11] Following the technique employed by the Supreme Court in similar cases, we consider the question in the context of the case before us without undertaking to determine whether the statute is necessarily void for vagueness with regard to all possible applications. See Williams v. United States, 341 U.S. 97, 101; Jordan v. DeGeorge, 341 U.S. 223, 232.

to the meaning of the term as used in this or any other federal statute.[12]

Dr. A. R. Dahlgren, the Public Health Service surgeon who had certified that Fleuti was a "psychopathic personality," testified that he did so because the Public Health Service manual for medical examination of aliens required him to so certify anyone who is a sex deviate. Dr. Dahlgren, who is not a psychiatrist, did not consider whether Fleuti's condition was hereditary, congenital, environmental or otherwise. His
110 finding was merely that Fleuti was a sexual deviate and that "by the instructions which I must follow, I have to place these deviates in this category."[13]

Dr. David R. Harvey, Fleuti's attending psychiatrist, was of the opinion that Fleuti's deviation is not sufficient to justify the diagnosis of "psychopathic personality." He stated that the formal label for Fleuti's condition would be that of "sexual deviation, homosexuality, now under control."[14]

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[12] The term "psychopathic personality" was used in a Minnesota statute; however, the term was expressly and narrowly defined in the statute and such definition was further construed and limited by the Supreme Court of Minnesota. In the light of such definition and construction, the United States Supreme Court had no difficulty in holding that the statutory term, as there used, was not too vague and indefinite to constitute valid legislation. Minnesota v. Probate Court, 309 U.S. 270. However, the government is not in a position to argue that this case adds certainty or definiteness to the term as used in the Immigration Act, because Fleuti would clearly not be classed as a "psychopathic personality" under the Minnesota statute.

[13] Dr. Dahlgren further testified: "We have to use certain terminology—and the rest of the world may not agree with this terminology; we are so ordered, therefore we do. * * *" The doctor agree that a standard definition of "psychopathic personality" would specify that it be a "constitutional" disorder due to hereditary or coitgenital conditions, and stated that he had no "strong feeling as to whether, according to traditional medical terms, Fleuti would be considered a 'psychopathic personality.'"

[14] Dr. Harvey expressed this further opinion:

"* * * He (Fleuti) does not frequent homosexual hangouts, has no evident interest in youths, manifests no irresponsible trends, and has his main social contacts with respected members of the community. * * * His sexual drive—particularly at his age—is thought to be within his range of control, especially if he is under the supervision of continuing contact with a psychiatrist. * * * His deviation is not sufficient to justify the diagnosis of psychopathic personality. * * * I do not think that another psychiatrist with adequate training and experience will be likely to disagree with my findings."

It is apparent that these two doctors, confronted with the identical facts, applied different standards in determining whether Fleuti was a "psychopathic personality." Dr. Dahlgren, feeling himself bound by the Public Health Service Manual, applied the test of whether Fleuti was a sex deviate, apparently ending the inquiry at that point. Dr. Harvey, while not insisting upon a showing of hereditary or congenital condition, considered such additional factors as the extent of the deviation, its effect upon other habits and activities, and whether control over the practice had been manifested.[15]

111 It is not surprising that these two doctors gave widely varying meanings to the term "psychopathic personality." [16] Congress was content to let "psychopathic personality" stand for "homosexuals" and "sex perverts," because the Public Health Service advised it that the term is "sufficiently broad" to accomplish this.[17] But the Public Health Service itself considered the term vague, saying in a report which was before the Congress in 1952:

"Although the term 'psychopathic personality' is vague and indefinite, no more appropriate expression can be suggested at this time." [18]

The Public Health Service view that the term is "vague and indefinite" is confirmed by authoritative writers in this field. Expert opinions to this effect, collected at page 940, note 33 of the article referred to in note 15 herein, are quoted in the margin.[19]

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[15] According to most present-day psychiatrists, "psychopathic personality" is attributable to environmental factors, whereas the earlier view was that this condition was either hereditary or congenital. The term has always been understood as referring to a lifelong pattern of behavior in conflict with social norms but without accompanying guilt or anxiety. The medical authorities and writers who have expressed these views are collected in a Note and Comment, 68 Yale L.J. 931, at 935, note 10.

[16] It is not established that Dr. Dahlgren would have differed with Dr. Harvey, if he had felt free to express his own opinion as to the term, rather than feeling obliged to apply the Public Health Service definition.

[17] S. Rep. No. 1137, 82nd Cong. 2nd Sess. (1952).

[18] Report of the Public Health Service on the medical aspects of H.R. 2379, in H.R. Rep. No. 1365, 82nd Cong., 2nd Sess. 46-47 (1952).

[19] Noyes, Modern Clinical Psychiatry, 3d ed. 1941, 410: Psychopathic personality.

therefore appears that the medical experts called to
ly the term in this particular case are in disagreement
it means, the Public Health Service which asked
use the term concedes that it is "vague and indef-
authoritative writers state that there is confusion
disagreement as to its meaning.
sion is inescapable that the statutory term "psy-
ersonality," when measured by common under-
d practices, does not convey sufficiently definite
at homosexuality and sex perversion are embraced
ince this statutory term thus fails to meet the test
ed in determining whether a statute is vague in the
al sense, we hold that the statute is void for vague-
plied in this case. Enforcement of the order of de-
would therefore deprive Fleuti of the due process of

der of September 22, 1959 for the deportation of
euti is declared to be void, that order is hereby set
nforcement of the order is enjoined.
orsement omitted.]

nsidered by many to be a meaningless designation * * * not
any common agreement * * * as to classification or * * *

allinson, Psychopathic Personality, 90 J. Mental Sci., (1944)

conclusion, that seems warrantable is that, at some time or
some reputable authority, the term psychopathic personality
d to designate every conceivable type of abnormal character."
Diagnosis and Etiology of Psychopathic Personalities as
Our Time, in Current Problems in Psychiatric Diagnosis, (Hoch
983), 139, 154:
t, the diagnosis of a psychopathic personality is practically

xual Offenses and Treatment of Sexual Offenders in the United
xual Offenses, 500, 507, (Radzinowicz ed. 1957):
nsensus is impossible in the no-man's land of psychopathic per-

The Psychopathic Delinquent and Criminal by George N. Thomp-
A.C.P., 42:
n 'psychopathic personality' has been used in an extremely broad
merican psychiatry * * *. Loose usage of the term has caused
n thinking."

113 In United States Court of Appeals for the Ninth Circuit

No. 17325

GEORGE FLEUTI, APPELLANT

v.

GEORGE K. ROSENBERG, DISTRICT DIRECTOR OF IMMIGRATION & NATURALIZATION SERVICE, APPELLEE

Judgment

Filed and entered April 17, 1962

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is *reversed*, the order of September 22, 1959, for the deportation is declared to be void, that order is hereby set aside, and enforcement of the order is enjoined.

114 [Clerk's certificate to foregoing transcript omitted in printing.]

No. 248, October Term, 1962

GEORGE K. ROSENBERG, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

GEORGE FLEUTI

Order allowing certiorari

October 15, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.